

No. 13020

United States
Court of Appeals
for the Ninth Circuit

LEONA SIMPSON,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record
FILED

OCT 11 1951

Appeal from the District Court for the District of Alaska,
Fourth Judicial Division. PAUL R. O'BRIEN
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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ATTORNEYS OF RECORD

Attorneys for Plaintiff and Appellee:

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United States Attorney,
Fairbanks, Alaska,

HUBERT A. GILBERT,

Asst. United States Attorney,
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Attorneys for Defendant and Appellant:

WARREN A. TAYLOR,

Fairbanks, Alaska,

WILLIAM V. BOGESS,

Fairbanks, Alaska.

In the District Court for the District of Alaska,
Fourth Judicial Division

No. 1537—Cr.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LEONA SIMPSON,

Defendant.

INFORMATION

The United States Attorney for the Fourth
Judicial Division, Territory of Alaska, charges:

That on the 10th day of February, 1951, in Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, Leona Simpson feloniously possessed and had under her control a narcotic drug, to-wit, heroine, contrary to the provisions of Sections 40-3-2 and 40-3-20 of the Alaska Compiled Laws Annotated, 1949.

Dated at Fairbanks, Alaska, this 26th day of February, 1951.

/s/ EVERETT W. HEPP,
United States Attorney. [1*]

[Endorsed]: Filed February 26, 1951.

* Page numbering appearing at foot of page of original certified Transcript of Record.

[Title of District Court and Cause.]

WAIVER, ARRAIGNMENT, PLEA AND TIME FOR SETTING FOR TRIAL

The Government was represented by Everett W. Hepp, U. S. Attorney, and Hubert A. Gilbert, Asst. U. S. Attorney; the defendant by Warren A. Taylor.

Upon interrogation by the Court and being properly informed by the Court, the defendant stated that she desired to waive prosecution by Indictment and be prosecuted under an Information which Waiver was accepted and the Information Ordered filed.

The defendant stated that she desired to waive time for Arraignment and desired to be arraigned forthwith. Whereupon, upon being asked if Leona Simpson was her true name, the defendant answered in the affirmative, and the Information was read to her and a true copy of the same handed to her.

The defendant waived time for entering her Plea and stated that she desired to plead forthwith, whereupon, upon being asked if she was Guilty or Not Guilty of the crime charged in the Information, to-wit: possession and control of narcotic drugs, the defendant pled Not Guilty, which plea was accepted and Ordered filed.

The time for setting this cause for trial was set for March 2, 1951.

Entered in Court Journal Feb. 26, 1951. [3]

[Title of District Court and Cause.]

VERDICT No. TWO

We, the Jury, duly empaneled and sworn to try the above entitled cause, do from the law and the evidence therein, find:

- (a) That the defendant is not guilty of the crime charged in the information in this case.
- (b) That the defendant, Leona Simpson, is guilty of the crime of attempting to commit the crime set forth in the information filed in this cause, to-wit: the crime of feloniously having possession and control of heroine, a narcotic drug, in the Fairbanks Precinct, 4th Division, Territory of Alaska, upon the 10th day of February, 1951.

Done at Fairbanks, Alaska, this 16th day of May, 1951.

/s/ ROBERT J. McCANN,
Foreman.

Entered in Court Journal May 16, 1951. [15]

[Endorsed]: Filed May 16, 1951.

[Title of District Court and Cause.]

**MOTION FOR ACQUITTAL AND, IN THE
ALTERNATIVE, FOR A NEW TRIAL**

The defendant moves the Court for a judgment of acquittal upon the following grounds:

That the information upon which defendant was tried did not allege a crime the attempt of which is triable and punishable at law.

In the alternative, defendant moves the Court to grant her a new trial for the following reasons:

1. The Court erred in denying defendant's motion for a directed verdict of acquittal made at the close of plaintiff's evidence.
2. The Court erred in denying defendant's motion for a directed verdict of acquittal made at the conclusion of the evidence.
3. The Court erred in admitting testimony to which objections were duly made.
4. The Court erred in giving instructions to the jury on the law of attempt over defendant's objections.
5. The evidence was insufficient to justify the verdict.
6. The verdict was contrary to law.

Dated at Fairbanks, Alaska, this 21st day of May, 1951.

/s/ WILLIAM V. BOGESS,
WARREN A. TAYLOR,
Attorneys for Defendant.

Acknowledgment of Service attached.

[33]

[Endorsed]: Filed May 21, 1951.

[Title of District Court and Cause.]

ORDER DENYING MOTIONS

The Court having on June 1, 1951, heard arguments on the defendant's Motion for an Acquittal in this cause or, in the alternative, Motion for a New Trial, and now being fully advised in the premises, it was Ordered that both motions be denied.

Entered in Court Journal June 6, 1951. [35]

[Title of District Court and Cause.]

MOTION FOR A NEW TRIAL

Comes Now, the above named Defendant, by Warren A. Taylor, of her Attorneys, and moves this Honorable Court for an order setting aside the verdict on the above entitled cause, and for a new trial of said cause upon the following grounds, to-wit:

1. Newly discovered evidence which was not available at the trial of said cause, and which has been discovered since the said trial.

This Motion is based upon the Affidavit of Leona Simpson and the exhibit attached thereto.

Dated this 8th day of June, 1951.

/s/ WARREN A. TAYLOR,
Of Attorneys for Defendant.

Acknowledgment of Service attached. [36]

AFFIDAVIT

United States of America,
Territory of Alaska—ss.

Leona Simpson, being first duly sworn, on her oath, deposes and says: That she is the Defendant in the above-entitled cause, and makes this Affidavit for the purpose of securing a new trial of the said cause.

That, on or about the 21st of May, 1951, she received a letter which was post-marked at Seattle, Washington, which post-mark bore the date of May 19th, 1951, of which the original of said letter and envelope is attached hereto and made a part of this Affidavit.

That, this letter was received after the trial of said cause and that same was not available as evidence at the said trial, and affiant believes and avers that if said letter had been received prior to the trial, and had been available therefor, that the said verdict would have been favorable to this defendant.

/s/ LEONA SIMPSON,
Defendant.

Subscribed and sworn to before me this 8th day of June, 1951.

[Seal] /s/ WARREN A. TAYLOR,
 Notary Public for Alaska.

My Commission expires 8-11-51.

[37]

[Canceled Stamp]: Seattle May 19 9 PM 1951
Wash.

Air Mail

Leona Simpson
Fairbanks
Alaska

Seattle, Wash., Gen. Del.

Dear Leona:

I'm sorry that you had to take the rap for the box
you got from the Pan Am for me.

Had to beat it when I heard about it. But will try
to make it up to you some day some way.

/s/ Juanita

[Endorsed]: Filed June 8, 1951.

[Title of District Court and Cause.]

ORDER DENYING MOTION FOR NEW TRIAL

The Government was represented by Hubert A. Gilbert, Asst. U. S. Attorney, the defendant was present in person and represented by Warren A. Taylor.

Respective counsels had argument on the defendants second Motion for a New Trial because of the discovery of new evidence.

It was Ordered that the motion be denied.

Entered in Court Journal June 8, 1951.

[39]

[Title of District Court and Cause.]

SENTENCE

The Government was represented by Hubert A. Gilbert, Asst. U. S. Attorney; the defendant was present in person and represented by Warren A. Taylor.

Mr. Taylor announced that the defendant was ready for sentence to be passed on her.

Respective counsel presented statements to the Court. The defendant waived any statement.

It was the Sentence of the Court that the defendant be confined in the Women's Correctional Institution at Alderson, West Virginia, for the period of two (2) years.

The defendant was remanded to the custody of the U. S. Marshal.

Entered in Court Journal June 11, 1951. [40]

In the District Court for the District of Alaska,
Fourth Judicial Division

No. 1537—Cr.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LEONA SIMPSON,

Defendant.

JUDGMENT AND COMMITMENT

On the 11th day of June, 1951, came the United States Attorney, and the defendant, Leona Simpson, appeared in person and by counsel.

It Is Adjudged that the defendant has been convicted on a verdict of guilty of the crime of attempting to feloniously possess and have under her control narcotic drugs, to-wit, Heroin, committed in the Fourth Judicial Division, Territory of Alaska, on the 10th day of February, 1951; and the defendant having been asked whether she had anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court:

It Is Ordered and Adjudged:

That the defendant is guilty of the crime of attempting to feloniously possess and have under her control a narcotic drug, and that said defendant shall be confined in the Federal Reformatory for Women at Alderson, West Virginia, for a period of Two (2)

years, such sentence to commence on the 11th day of June, 1951.

It Is Ordered that the Clerk deliver a certified copy of this Judgment and Commitment to the United States Marshal, or other qualified officer, and that the same shall serve as the commitment herein, and that said defendant pay the costs of this action in the sum of \$....., to be taxed by the Clerk of the Court.

Done at Fairbanks, Alaska, this 11th day of June, 1951.

/s/ HARRY E. PRATT,
District Judge.

Entered in Court Journal June 11, 1951. [41]

[Endorsed]: Filed June 11, 1951.

[Title of District Court and Cause.]

NOTICE OF APPEAL

The name and address of appellant is Leona Simpson, 642 Fourth Avenue, Fairbanks, Alaska.

The names and addresses of appellants' attorneys are Warren A. Taylor and William V. Boggess, P.O. Box 200, Fairbanks, Alaska.

The appellant was charged with the felonious possession and control of a narcotic drug contrary to the provisions of Sections 40-3-2 and 40-3-20 of the

Alaska Compiled Laws Annotated, 1949, and the jury returned a verdict of guilty of an attempt of the offense charged.

The judgment of the above-entitled Court entered on the 11th day of June, 1951, adjudged that the appellant had been convicted on a verdict of guilty of the crime of feloniously attempting to possess and control a narcotic drug. It was further adjudged that the appellant be sentenced to confinement in the Federal Reformatory for Women at Alderson, West Virginia, for a period of two years.

On the 6th day of June, 1951, the above-entitled Court entered an order denying appellant's Motion for an Acquittal and for a New Trial.

On the 8th day of June, 1951, the above-entitled Court entered an order denying appellant's second Motion for a New Trial. [42]

Leona Simpson, the above-named appellant, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the above-stated judgment and orders.

/s/ WARREN A. TAYLOR,
WILLIAM V. BOGESS,
Attorneys for Appellant.

Acknowledgment of Service attached.

[Endorsed]: Filed June 11, 1951.

[43]

[Title of District Court and Cause.]

DESIGNATION OF RECORD

To: The Clerk of the District Court for the Territory of Alaska, Fourth Division.

You are hereby requested to prepare, certify and transmit to the Clerk of the United States Court of Appeals for the Ninth Circuit, with reference to the Notice of Appeal heretofore filed by the defendant, Leona Simpson, in the above-entitled cause, the complete record (including this designation) and all the proceedings and evidence in said cause, prepared and transmitted as required by law and by rules of said Court.

/s/ WILLIAM V. BOGESS,
Of Attorneys for Defendant.

Acknowledgment of Service attached.

[Endorsed]: Filed July 2, 1951.

[48]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, John B. Hall, Clerk of the above entitled Court, do hereby certify that the following list comprises all proceedings as per Designation of Record by Appellants in the above entitled cause, viz.:

1. Information.
2. Order re Information.
3. Waiver, Arraignment, Plea and Setting for Trial.

4. Order Setting Cause for Trial.
5. Praecipe of United States.
6. Subpoena for Government Witness.
7. Order Resetting Trial of Cause.
8. Order Resetting Trial of Cause.
9. Praecipe of United States.
10. Stipulation re Venire of Jurors.
11. Trial by Jury.
12. Verdict.
13. Order for Meals for Jurors.
14. Instructions to the Jury.
15. Appearance of Co-council for Defendant.
16. Motion of Acquittal, etc.
17. Hearing on above Motion.
18. Order Denying above Motion for Acquittal,
etc.
19. Motion for New Trial.
20. Order Denying Motion for New Trial.
21. Sentence.
22. Judgment and Commitment.
23. Notice of Appeal.
24. Appeal Bond.
25. Cost Bill.
26. Designation of Record.
27. Transcript of Proceedings at Trial.
28. Exhibits, including the narcotic Heroin, sent
under separate cover by registered mail.

Witness my hand and the seal of the above en-titled Court, this 18th day of July, 1951.

[Seal] /s/ JOHN B. HALL,
Clerk of the District Court, Fourth Judicial Division,
Territory of Alaska.

In the District Court for the District of Alaska,
Fourth Judicial Division

No. 1537—Cr.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LEONA SIMPSON,

Defendant.

Appearances:

Everett W. Hepp, United States Attorney, of Fairbanks, Alaska; Hubert A. Gilbert, Asst. United States Attorney, of Fairbanks, Alaska, Attorneys for Plaintiff.

Warren A. Taylor, of Fairbanks, Alaska; William V. Boggess, of Fairbanks, Alaska, Attorneys for Defendant.

TRANSCRIPT OF RECORD

Be It Remembered, that upon the 14th day of May, 1951, at the hour of 10 o'clock a.m., the trial of the above named cause came on regularly for hearing, the defendant being in court in person and represented by counsel, the Honorable Harry E. Pratt, District Judge, presiding:

The Court: Call the roll of the jury.

(Whereupon, the Clerk of the Court proceeded to call the roll.) [1*]

* Page numbering appearing at foot of page of original certified Reporter's Transcript.

The Court: Counsel wish the panel brought up to 24 or are you willing to go ahead with these 21?

Mr. Hepp: The government is ready to proceed with the jurors that we have.

Mr. Taylor: Can I confer with my client just a moment, your Honor.

The Court: Yes.

(Mr. Taylor conferred with the defendant.)

Mr. Taylor: We are willing to go ahead with the venire that are here now.

The Court: Very well then. This is the time set for trial in the case of United States against Leona Simpson. Parties ready?

Mr. Hepp: Government's ready, your Honor.

Mr. Taylor: Defendant's ready, your Honor.

The Court: Names of the jurors in the box.

The Clerk of Court: Box is full, your Honor.

(Mr. Hepp made a short opening statement to the venire.) [2]

(Mr. Hepp examined the jurors.)

(Mr. Taylor examined the jurors.)

(A jury was duly empaneled and sworn.)

Mr. Hepp: I wonder if we can have a few minutes recess, your Honor?

The Court: We are going to adjourn in a moment and the jurors not chosen and in the box here are excused from the panel. We will take a 10 minute recess.

(At this time, a recess was taken and thereafter the trial of this cause was resumed.)

The Court: Counsel stipulate all members of the jury are present?

Mr. Taylor: Yes, your Honor.

Mr. Hepp: We will, your Honor.

The Court: Very well, proceed.

(At this time, Mr. Hepp made an opening statement to the court and jury.)

Mr. Taylor: The defendant waives a statement, your Honor, at this time.

The Court: Call your witness.

Mr. Hepp: Power Greer, please.

POWER G. GREER,

called as a witness in behalf of the Plaintiff, having been first duly sworn, testified as follows: [3]

Direct Examination

By Mr. Hepp:

Q. Would you state your name to the jury please? A. Power G. Greer.

Q. By whom are you employed?

A. United States Treasury Department.

Q. What are your duties as a treasury agent?

A. Well, I am generally known as a general treasury enforcement agent and in such capacity, I have the enforcement of the—all treasury agencies. There are five. The alcohol tax unit and the intelligence unit which are embraced in the Bureau of Internal Revenue, the United States Custom Service, the Secret Service and the Bureau of Narcotics.

Q. Where is your headquarters, Mr. Greer?

A. In Anchorage.

(Testimony of Power G. Greer.)

Q. How long have you been with the treasury service, Mr. Greer? A. 20 years.

Q. Sir? A. 20 years.

Q. Do you know the defendant, Leona Simpson?

A. Yes, sir.

Q. Calling your attention to February 9th of this year—just yes or no please to this—did you have occasion to go to the Pan American office on any matter which at that time [4] or later concerned this defendant? A. Yes.

Q. What time of the day did you go there, Mr. Greer?

A. It was approximately 12:30 p.m.

Q. Would you state what you did when you arrived at the office?

A. When I first arrived there, I waited a few moments for the return of Mr. Harris who I was informed was in charge of the office. When Mr. Harris appeared, I identified myself, showed him my credentials and told him who I was and stated the purpose of my visit which was that—(Interrupted)

Mr. Taylor: Just a moment. I think you have answered the question. I object to any volunteer statements, your Honor.

The Court: Objection sustained.

Q. (By Mr. Hepp): While at the Pan American office, Mr. Greer, was your attention attracted to any package? A. Yes, sir.

Q. Do you know to whom that package was addressed?

Mr. Taylor: Your Honor—just a moment, Mr.

(Testimony of Power G. Greer.)

Greer. I am going to object until it is shown as to what connection this defendant—this witness went to the Pan American Airways in regard to the defendant. He said he went there in regard to the defendant but I believe it [5] isn't properly established how the defendant was connected with the Pan American Airways.

Mr. Hepp: Your Honor, I would like to ask for a conditional entry of this testimony then.

The Court: Yes.

Mr. Hepp: I can come forward with proof, if necessary. I think it is rather awkward to start in the middle of a matter—

The Court: The connection will be shown? Objection overruled.

Mr. Hepp: Would you read the question, Mr. Reporter?

(The last question was read to the witness as follows:

“Q. Do you know to whom that package was addressed?”)

Witness: Yes.

Q. (By Mr. Hepp): To whom was it addressed?

A. Mrs. Juanita Pearson.

Q. Do you know or were you able to learn where that package came from?

A. Only from what was on the address on the package.

Q. What did you do concerning the package, Mr. Greer? A. I examined it—

Mr. Taylor: Just a moment, your [6] Honor. I

(Testimony of Power G. Greer.)

am going to object to any questions in regard to this package until the package is identified and brought into court.

The Court: Objection overruled.

Q. (By Mr. Hepp): Would you answer the question? You did answer it, didn't you?

A. Yes, sir. I examined it.

Q. You examined it? What size package was it?

A. It was a pasteboard box approximately six by six inches.

Q. And how was it wrapped, if it was wrapped?

A. It was wrapped in brown wrapping paper.

Q. Mr. Greer——

Mr. Hepp: I would like to mark this for identification, Mr. Clerk.

Clerk of Court: Government's identification number one.

(At this time, a paste board box was received and marked for identification as Plaintiff's Identification No. 1.)

Q. (By Mr. Hepp): Mr. Greer, I show you government's identification number one which appears to be a paste board box with packing—a packing compound in it. I will give you that and ask [7] you to examine it please. State if you know what it is, Mr. Greer, please.

A. This is the package that I examined at the cargo office.

Q. I see. Do you know where the wrapper is that you have testified concerning?

A. Yes, sir.

(Testimony of Power G. Greer.)

Q. Where is it, sir? A. I have it.

Q. Would you produce it please?

(Document handed to Mr. Hepp by witness.)

Mr. Hepp: Would you mark this for identification, Mr. Clerk?

Clerk of Court: Government's identification number two.

(At this time, a piece of brown wrapping paper was received for identification and marked as Government's Identification No. 2.)

Q. (By Mr. Hepp): I have here government's identification number 2, Mr. Greer, which you stated was the wrapper. I will ask you to examine it again. Is that the wrapper that you stated that you—

A. Yes, sir; it is.

Q. That was the wrapper that was around this box? [8] A. It was.

Q. Does that wrapper contain an addressee or a consignee, Mr. Greer? A. It does.

Q. To whom is it addressed?

A. It is addressed to Mrs. Juanita Pearson, Fairbanks, Alaska.

Q. From whom did—was the package sent if it states on the—

A. It states from Miss Earlenne Pearson, 16327, southwest 43rd Street, Seattle, Washington.

Q. Now, going back to this package or rather the contents in it, did you say you examined this package? A. I did.

Q. Did you examine the contents in it?

A. I did.

Q. What did you find?

(Testimony of Power G. Greer.)

A. The first thing I found other than the paper was a wooden box, a wooden powder box which was empty and below another layer of paper I found a white envelope that was sealed with scotch tape. I opened this envelope and found some powder.

Q. Just yes or no—did you do any act endeavoring to ascertain what that powder was?

A. Yes. [9]

Q. When did this occur?

A. Approximately one hour later.

Q. What did you do in that regard, Mr. Greer?

A. I took it to the chemical laboratory, Ladd Air Force Base and there requested Dr. Bowden to make an analysis of it.

Q. Did you—would you just explain the manner in which you gave him the powder? I mean, how did that happen?

A. I showed him the entire contents—rather, the white envelope and asked him how much he would need in order to make the analysis and he stated a very very small amount. He took a very minute amount of it, I would say less than a grain—probably half a grain—and retained it.

Q. In order to enable these jurors who—some of whom may not understand the equivalent weights, what is a grain in comparison for instance to a tea-spoonful? A. That would be hard to say.

Q. Roughly?

Mr. Taylor: Just a moment, your Honor, I object to the question. It calls for a conclusion of the witness.

The Court: Objection overruled.

(Testimony of Power G. Greer.)

Witness: I could probably better compare it this way, sir, that there are 420 grains in an ounce, avoirdupois weight. [10]

Q. (By Mr. Hepp): You say there was one or less grains removed from this by this chemist?

A. Yes, sir.

Q. What did you do with the balance of the powder? A. I retained it in my custody.

Q. Do you have it now?

A. No, sir; I do not.

Q. What did you do with it?

Mr. Taylor: Just a moment, your Honor. I think that the powder is the best evidence, your Honor.

The Court: Objection overruled.

Witness: The powder on the following day was forwarded under postal registry to our chemist in Seattle, Washington.

Q. (By Mr. Hepp): What is his name please?

A. Mr. Hugo Ringstrom.

Q. Now, getting back to this package in the office, did you have occasion to go back to the Pan American office following this time that you have testified in which you originally saw the package and examined it? A. Yes, sir.

Mr. Taylor: Just a moment, Mr. [11] Greer. We are going to object to the question. There is no time set as to when he first went to the Pan American office or when he took the powder to the chemist. No date has been set.

Mr. Hepp: Your Honor, he said the 9th at 12:30 or 1 o'clock I believe it was.

(Testimony of Power G. Greer.)

The Court: Yes. Objection overruled.

Q. (By Mr. Hepp): When did you return to the Pan American office, Mr. Greer?

A. I returned that afternoon approximately four or five o'clock.

Q. That was on February—the same day—

A. February 9th, yes, sir.

Q. I see. Did you have occasion to return there the next day? A. I did, sir.

Q. What time did you go there?

A. Approximately in—8 o'clock in the morning.

Q. In the morning? Do you know, Mr. Greer, whether or not this package was ever called for?

A. Yes, sir.

Q. Do you know of your own knowledge?

A. Yes, sir; I do. [12]

Q. Was it called for? A. It was.

Q. When was it called for?

A. Approximately 12:15 to 12:20 p.m. on February 10th.

Q. Who called for the package?

A. A cab driver.

Q. Do you know what his name was?

A. Brazell or Brazwell.

Q. Were you present when he called for the package? A. I was.

Q. What, if any, indicia of ownership or right or claim to the package was used in order to claim it?

A. The cab driver produced a note written by hand.

(Testimony of Power G. Greer.)

Mr. Taylor: If the court please, I am going to object to any conversation or any testimony about this note unless the note is produced and identified, best evidence rule.

The Court: Objection overruled.

Q. (By Mr. Hepp): I am not sure that I caught all of your answer, Mr. Greer.

A. The cab driver produced a note written in hand.

Q. There—was there a signature on the note?

A. There was.

Q. Do you know what name purported to be—

Mr. Taylor: Just a moment, Mr. Greer. Your Honor, I am going to renew my objection. I think under the best evidence rule the note itself is the best evidence and this would be under the hearsay rule, your Honor, and I think the absence of it should be certainly explained to the court and no further testimony should be made as to this note.

Mr. Hepp: I am glad to come forward with an offer of proof, your Honor.

The Court: Very well, then. Come forward.

(The following proceedings were had out of the presence and hearing of the jury:)

Mr. Hepp: I will show with this witness and others—two other witnesses—that the note was either misplaced or lost in the residence of the defendant and that if the note is presently possessed by anyone, it would be in the possession of the defendant and that being so irrevocably lost in so

(Testimony of Power G. Greer.)

far as it is the power of the prosecution to produce, I believe that secondary evidence of same is admissible. I will show those things.

The Court: Have you made a demand on the defendant for it?

Mr. Hepp: No, I haven't made a demand. [14]

Mr. Taylor: If they had something in their possession which was material evidence, it either can be construed that it was in favor of the defendant or they are trying to conceal something. It would be prejudicial to allow them to testify as to the contents of this note since they do not have the note and it was material evidence and I don't believe, your Honor——

Mr. Hepp: I don't feel so, not with four witnesses that saw the note and the witnesses are excluded, your Honor. I don't think there could possibly be a travesty on justice in this case. We have no reason necessarily to believe that the defendant has this note. As I say, if it is possessed at this time, it would be in the house there because it was there when the search was made by the treasury agent and he never left the house with the note. He couldn't find it, but he left——

Mr. Taylor: He testified to the note from the taxi driver, your Honor, at the Pan Am office and it would be highly prejudicial.

The Court: The objection will be overruled.

(The following proceedings were had in the presence and hearing of the jury:)

(Testimony of Power G. Greer.)

Mr. Hepp: Mr. Reporter, do you have the last question handy? [15]

(The last question was read as follows:

"Q. Do you know what name purported to be—"

Q. (By Mr. Hepp, continuing): —purported to be in the signature, if there was one on the note?

A. I do, sir.

Q. What was that name?

A. Mrs. Juanita Pearson.

Q. I believe you stated that this note was in handwriting, was it? A. Yes, sir.

Q. At the time when Mr.—when this cab driver came to the office and produced this note, what did you do then, Mr. Greer?

A. After the cab driver had signed for the package, I made my presence known and identified myself to the cab driver then.

Q. Were you alone at that time or in the company—

A. No, sir. United States Marshal McRoberts was present also.

Q. You say you identified yourself to the cab driver, is that right? A. Yes, sir. [16]

Q. What happened then?

A. I asked to be shown the note and it was shown to me. In fact, I took custody of the note.

Q. What did you do next?

A. I asked the driver from whom he had obtained the note and he told me.

(Testimony of Power G. Greer.)

Q. Did you leave the Pan American office after that or at any time?

A. Yes, sir. I requested the driver to return to the place where he had obtained the note and the driver took the Marshal and I to 642 4th Street.

Q. I see. Would you just state just what happened on your arrival at 642 4th Street?

A. When we arrived and drove up in front of the address and stopped, I noticed two ladies standing in the door. The door was partially ajar. They had just let a dog out the side and we entered the home and I asked the cab driver to point out the lady that had given him the note and he pointed out Leona Simpson. I then presented Leona Simpson the note—

Mr. Taylor: Just a moment, your Honor. I am going to object to any further questioning along this line until it is shown by this witness that they had a valid right to enter the residence of Mrs. Simpson. It was her home and they say they entered into the home. I want to [17] find out just what rights they had to go into the home, your Honor.

Mr. Hepp: Well, I'll go into that, your Honor.

The Court: All right.

Q. (By Mr. Hepp): Going back to when you came to 642 4th Street, what exactly did you do now? That is, did you get out of the car then?

A. Yes, sir.

Q. You got—who got out of the car?

A. All three of us.

(Testimony of Power G. Greer.)

Q. What happened then? Just take it a step at a time, Mr. Greer?

A. I asked the driver if this was the place and he said it was.

Q. Yes. Now, what happened?

A. We all got out of the car and as I stated, the door was partially ajar and two ladies were standing inside.

Q. How far inside?

A. Well, it was partially just inside but within sight—practically up to the front of the door.

Q. I see.

A. They saw us coming and I entered the door and in fact just stood inside the door. I believe the Marshal may have [18] been outside. I am not sure. We were all there together though.

Q. Right at the door?

A. Yes, sir. Some of us—in fact, we all may have been inside. I am not sure about that.

Q. Did you see the defendant at that time?

A. Yes, sir.

Q. Did she make any statement to you that indicated that you weren't trespassing where you were standing? A. She did not.

Mr. Taylor: Just a moment, your Honor. I am going to object to the question as improper—incompetent, irrelevant and immaterial. The entry itself speaks for itself if it was made without the consent of the defendant.

Mr. Hepp: Your Honor, I would very certainly protest that argument. I think anyone has a right

(Testimony of Power G. Greer.)

to go up and talk at the doorstep or inside at the front door. They have a business license to enter there if they come on any type of business and certainly it would shift the burden of exclusion onto the person that did have a possessory right, but your Honor, there is certainly an implied admission by the very nature of the thing. It's done every day, all day.

Mr. Taylor: Can't carry the admissions [19] over to the defendant. He hasn't testified he made a lawful entry.

The Court: Well, it is almost 12 o'clock. We will take an adjournment. There is nothing on during the noon hour, is there, Mr. Clerk?

Clerk of Court: No, there isn't, your Honor.

The Court: We will take an adjournment until two o'clock in a moment.

(At this time, the court duly admonished the jury.)

(The trial of this cause was recessed until two o'clock p.m.)

(At 2 o'clock p.m., the trial of this cause was resumed.)

The Court: Call the roll of the jury.

(Whereupon, the Clerk of the Court proceeded to call the roll.)

Clerk of the Court: They are all present, your Honor.

The Court: Counsel ready to proceed with the trial of this case?

Mr. Hepp: Ready, your Honor. [20]

Mr. Taylor: Ready, your Honor.

The Court: Very well.

(Mr. Power G. Greer resumed the witness stand and continued his testimony under direct examination as follows:)

Mr. Hepp: May it please the court, I think the closing question to this morning's session involved a conversation or a question concerning a conversation—

The Court: Will you read it, Mr. Reporter?

(The last question propounded to the witness was read as follows:)

"Q. Did she make any statement to you that indicated that you weren't trespassing where you were standing?"

The Court: Is there an objection to that?

Mr. Taylor: I believe I did object to that, your Honor. I think the objection was given to the reporter.

The Court: Well, it will be overruled.

Witness: No, she made no reference to anything of that nature. [21]

Q. (By Mr. Hepp): I believe you stated previously that you were standing at or just inside the doorway, is that right, Mr. Greer? A. Yes, sir.

Q. Did you have any conversations with this defendant at that time? Just yes or no please.

A. Yes, sir.

(Testimony of Power G. Greer.)

Q. Who was present at the time?

A. The cab driver, the Marshal, Leona Simpson and a girl by the name of Betty Austin, and myself.

Q. And would you again state the time and the date?

A. It was on February 10th approximately 12:30 at this time.

Q. And this was just at or just inside the doorway of this house? A. Yes, sir.

Q. That would be 642 4th Street?

A. Yes, sir.

Q. What was the conversation, Mr. Greer?

A. After the cab driver had pointed out Leona Simpson as being the party that had given him the note, I had the note in my hand and I showed it to Leona Simpson and I asked her if she had written it. She replied that she had—

Mr. Taylor: Just a moment, your Honor. We are going to object to any further questions about [22] the note unless it—there is some explanation given for its non admission or marked for identification. Under the best evidence rule, the note itself is the best evidence, your Honor. I don't think he can testify to it unless it is shown where the note is.

The Court: Objection will be overruled.

Q. (By Mr. Hepp): You stated that she said that she had written it, is that right? A. Yes, sir.

Q. Where was this note at that time, Mr. Greer?

A. It was in my hand and she was looking at it.

Q. How far away were—from you was she?

A. Standing right next to her.

(Testimony of Power G. Greer.)

Q. Was there anything else said at that conversation following this statement as to whether or not she had written the note? A. Yes, sir.

Q. Would you state what was said following that statement, Mr. Greer?

A. I asked her if she had given it to the driver and she stated she had and I said, "Well, here's your package". She hesitated for several moments and then she finally stated "It isn't my package. I was going to get it and keep it for [23] someone."

Q. Anything else said?

A. Yes, sir. I asked her if she would tell me who the person was that she was to keep it for and she never did reply to that question.

Q. At that—up to that time Mr. Greer, had there been any reference made by anyone as to the contents of that package? A. No, sir.

Q. Had the word "narcotics" or anything—

Mr. Taylor: Just a moment, your Honor. We are going to object to the question as incompetent, irrelevant and immaterial at this time. There is no testimony as to what was in the package at that time or any knowledge that this defendant knew what was in the package.

The Court: Objection overruled.

Q. (By Mr. Hepp): Had there been any statement, Mr. Greer, made—

A. No, there had not.

Q. Was anything else said in that conversation? A. Yes, sir.

(Testimony of Power G. Greer.)

Q. Just continue on with the conversation please?

A. When she made no reply to the question I asked her in reference to who was the owner of the package, I stated, "Well [24] Leona, I am a treasury agent. This package contains approximately \$1,000 worth of illicit heroin".

Mr. Taylor: Just a moment, your Honor. I am going to ask the answer be stricken upon the grounds that the value of that narcotic is a mere conclusion of law and incompetent, irrelevant and immaterial. No showing—

The Court: Objection overruled.

Q. (By Mr. Hepp): Continue on with the statement.

A. I told her that as the package contained approximately \$1,000 worth of illicit heroin, a narcotic, that under the circumstances I would have to arrest her and she would have to come with me to the United States Attorney's office.

Q. Just to go back and catch one point that I am not quite sure I understood. Did you make—before this last statement in which you identified yourself as a narcotics agent, before that moment, I believe you said something about she refusing to identify the person or something.

Mr. Taylor: Just a moment, your Honor. I am going to object to the question as leading and suggestive and prejudicial.

Mr. Hepp: I believe that those very words were

(Testimony of Power G. Greer.)

said by this witness and I just wanted him to elaborate. [25]

Mr. Taylor: This witness did not answer—

Mr. Hepp: I will ask the reporter to read back.

The Court: Objection overruled.

Q. (By Mr. Hepp): Would you answer the question, Mr. Greer? What was said concerning that?

A. Yes, sir. I asked Leona—as I stated when she stated the package wasn't hers and that she was only getting it and keeping it for someone, I asked her to tell me who she was keeping it for and she never has answered the question. To this day, she hasn't answered that question. I gave her several moments to answer the question and when she didn't do it, I said, "Well, Leona, under the circumstances, I will have to place you under arrest," and I identified myself and told her we would have to come to the United States Attorneys office.

Mr. Hepp: Mr. Clerk, would you mark this for identification please?

Clerk of the Court: Plaintiffs' identification number three.

(At this time, a manilla envelope was introduced and marked for identification as Plaintiff's Identification No. 3.) [26]

Q. (By Mr. Hepp): Now Mr. Greer, going back in your testimony to a statement you made that you had sent some white powder to someone, would you state again what you said concerning that?

A. Yes, sir. To elaborate on that, the powder was—stayed in my custody until I returned to Anchor-

(Testimony of Power G. Greer.)

age which was the day or so following for the reason that while I was here, I did not have any of the narcotics sealed folders that we are required to submit the narcotics to the chemist in. When I returned to my office in Anchorage, I placed this in the folder and submitted it to the chemist.

Q. How did you cause this submission?

A. Under registered mail.

Q. I show you plaintiff's identification number 3 which appears to be a brown envelope with post marks on it and ask you to examine it please. (Handed to witness.) State if you know what it is?

A. Yes, sir.

Q. What is it please?

A. This is the official envelope in which the container of heroin was mailed to the chemist.

Q. And again, who mailed it?

A. I did, sir.

Q. And does heroin—is that the same heroin that you removed from this package that you have testified to? [27] A. It is.

Q. Have you since had that heroin or—in your possession, Mr. Greer?

A. No, sir; I have not.

Q. Have you seen it since you mailed it?

A. No, sir; I have not.

Q. I would like to ask another question or two, Mr. Greer, concerning this note that you have testified to. Do you know where that note is, Mr. Greer?

A. No, sir; I do not.

Q. When did you last see that note?

(Testimony of Power G. Greer.)

A. Last time I saw it was in the home of Leona Simpson when it was folded up and placed under the string that wrapped the package and contained the heroin.

Q. Now, in relation to this—the period of time during which this conversation took place that you have testified to, when did you see that note last in relation to that conversation?

A. Well, it was some few minutes thereafter. I placed the box and the note on the table in the kitchen or the front room of the home after I told Leona that she was under arrest and had to come with us. She stated she had to dress which she did and we were there approximately 30 minutes.

Q. Are you able to explain to this jury what happened to that note? [28]

A. I have an opinion.

Q. No—

Mr. Taylor: We object to an opinion, your Honor.

Mr. Hepp: I will refuse that answer.

Q. (By Mr. Hepp): Of your own knowledge, can you explain where that note is or what became of it? A. No, sir.

Q. Did you make a search about your person or other places for that note before you left the premises of Leona Simpson, Mr. Greer?

A. I did, sir.

Q. Did you find it or any trace of it?

A. No, sir.

Q. And you are presently unable to produce that note? A. No, sir.

(Testimony of Power G. Greer.)

Q. Did you understand the question? I say, you are presently unable to produce that note?

A. That's correct. I do not have it. I don't know where it is.

Q. I believe I will ask you one more question concerning—did you see the note?

A. Yes, sir; I did. [29]

Q. And you saw the writing on it yourself?

A. Yes, sir.

Q. Did you see a name subscribed to that writing? A. Yes, sir.

Q. What was that name?

A. Mrs.—(pause) I'll get it in a minute. Pearson. (pause) Well, the signature at the bottom of the note was the same that was on the package.

Q. You remember that? A. Yes, sir.

Q. Well, if you—if that is a recollection of yours, I will ask—show you government's identification number two which was on the package and ask you—

Mr. Taylor: If the court please, we are going to object until that is offered in evidence as to any reference or refreshing his memory, plaintiff's identification two.

The Court: Objection overruled.

Witness: Mrs. Juanita Pearson.

Mr. Hepp: May I have just a moment, your Honor?

The Court: Surely.

Mr. Hepp: (pause) You may question the witness. [30]

(Testimony of Power G. Greer.)

Cross Examination

Q. (By Mr. Taylor): Now Mr. Greer, you were in town on the 9th day of February, 1951?

A. Yes, sir.

Q. How long prior to the 9th of February were you here?

A. If I recall, Mr. Taylor, I came up the first part of the week. I was here several days prior to that date.

Q. Now you testified that you were informed that there was a package at the Pan Am office?

A. Yes, sir.

Q. Who informed you?

A. My information, Mr. Taylor, came by telephone.

Q. Was—who was speaking?

A. He didn't give a name.

Q. And from your—and you went to the Pan Am office then on the afternoon of the 9th of February, is that right? A. Yes, sir.

Q. Now, from the outside of this package, Mr. Greer, was there any indication that it contained narcotics?

A. No, sir; I would say no. The package had been broken on one corner and you could tell partially what was on the inside. That was all.

Q. Well, by partially, what do you mean? You saw some packing in the box? [31]

A. I saw some packing and part of the little wooden box.

Q. And because you saw a little wooden box in

(Testimony of Power G. Greer.)

there, you took that package into your possession, is that right? A. No, sir.

Q. Why did you take it into your possession?

A. I didn't take it into my possession until I examined it and found a narcotic drug was contained therein. Then I took it in my possession.

Q. You are then in the habit of opening up packages being sent through the mails through the Pan Am or other aero carriers?

Mr. Hepp: Just a minute, Mr. Greer. I object to that question as to the habit of law enforcement. I don't think it bears on this particular case. He can ask him any question as to what he did here. I believe that this is irrelevant—

The Court: Objection sustained.

Q. (By Mr. Taylor): Then without—did you have a search warrant to open up the package addressed to somebody else?

Mr. Hepp: I object to that, your Honor. There's nothing in the law or any place else that requires a search warrant to open up a package. I believe a search warrant pertains to a private dwelling house of a person. [32]

The Court: Objection sustained.

Q. (By Mr. Taylor): And you took this package which was addressed to Juanita Pearson and opened it up?

A. What wasn't already opened, yes, sir; I did.

Q. Just what was the condition of that box at the time? Did it have the wrapping paper around it?

(Testimony of Power G. Greer.)

A. Yes, sir; with the exception of this hole or crushed side.

Q. And was the box itself broken?

A. There was a hole in it as I recall. You can look through part of it.

Q. And what did you see when you were looking through that hole?

A. The packing and part of this wooden box.

Q. And you say there was nothing in the wooden box, Mr. Greer? A. No, sir.

Q. Now, that was about three o'clock on Friday afternoon that you—or during the day between 4 and 5 o'clock in the afternoon, is that right?

A. No, sir.

Q. What time on the 9th?

A. That was approximately 1 p.m.

Q. 1 p.m.? What—and you took the package and took it to [33] Ladd Field? A. Yes, sir.

Q. Now, after you opened that and gave the chemist at Ladd Field a small amount of the contents, what did you do with the package then?

A. I kept it in my custody.

Q. Did you ever return that package to the Pan Am? A. Yes, sir.

Q. When did you return it to Pan Am?

A. The next morning.

Q. And when did you take possession of it again?

A. I never turned it over to any representative of the Pan Am.

Q. You kept it in your possession?

(Testimony of Power G. Greer.)

A. I kept it in my possession.

Q. From then until—from one o'clock on Friday until the present time—until you turned it over to the chemist in Seattle?

Mr. Hepp: Just a minute. Your Honor, I believe this deals with this custody or possession or something. I am going to object to this further line of questioning on that matter until counsel defines what he means. There is a lot of difference between custody and possession and I believe that that is a legal term and I am going to object to it until he defines just exactly what he [34] is asking this witness. He has interchanged the words custody and possession and I believe they have a completely different significance in terms of law.

The Court: You can bring it out in the redirect examination if you want. Objection overruled.

Q. (By Mr. Taylor): You may answer.

A. Would you repeat the question?

Mr. Taylor: Will you read the question, Mr. Reporter?

(The question was read to the witness as follows:)

“Q. From then until—from one o'clock on Friday until the present time—until you turned it over to the chemist in Seattle?”

Q. (By Mr. Taylor): You had possession of those contents of that package, is that right?

A. Yes, sir.

Q. And that at the time the taxi driver came to

(Testimony of Power G. Greer.)

the Pan Am Airways, you had the package at that time? A. Yes, sir.

Q. And to whom did the taxi driver deliver the so-called note that you stated he had?

A. He delivered that to Mr. Barnes who was on duty at the [35] cargo office.

Q. And then what did Mr. Barnes do with the note? A. He brought it to me.

Q. And where were you?

A. I was in the back office.

Q. Were you concealed in the back office?

A. I couldn't be seen from where he was standing.

Q. You were concealed then in the back office?

A. Yes, sir.

Q. Now, did you ever make any inquiries as to a Mrs. Juanita Pearson living in Fairbanks?

A. To a certain extent, yes, sir.

Q. And do you know where Mrs. Juanita Pearson is at the present time?

A. Not at the present time.

Q. And when did you first secure possession of this so-called note that you testified about?

A. When Mr. Barnes delivered it to me.

Q. In the back room? A. Yes, sir.

Q. Then what did you do then, Mr. Greer?

A. I took it with the package out to the front and questioned the driver.

Q. And I believe then that you went with him —you testified you went to 642 4th Street? [36]

A. Yes, sir.

(Testimony of Power G. Greer.)

Q. And at the time you got to 642 4th, there was two women standing in the doorway?

A. Yes, sir.

Q. Now, when you entered—you stated you entered the house, you walked into the house. Did you state at the time before you entered that you were an officer? A. I did not.

Q. You just shoved the door back and walked in? A. The door was open.

Q. I mean, did you walk in then without—you said it was partially open in your first testimony?

A. Yes, sir.

Q. Was it wide open to walk in?

A. No, I doubt it. As I recall, it was just partially open and Leona Simpson was standing almost in the doorway.

Q. And you just went and walked right on in then?

A. No, it was right in the doorway that the—I asked the driver which one of the ladies gave him the note and when he pointed out Leona Simpson—

Q. Where were you standing at the time you walked—at the time you asked the taxi driver which one was Leona Simpson?

A. We were right at the doorway. I wouldn't say we were on the inside or the outside. [37]

Q. Now Mr. Greer, how is it you did not ask for Mrs. Pearson?

A. I wasn't looking for Mrs. Pearson particularly.

(Testimony of Power G. Greer.)

Q. Isn't that the name on the box?

A. That's true, but if I had followed the directions on the note, I wouldn't have gone to 642 4th Street.

Q. There was some other directions on this note then besides—

A. There was an address on the note.

Q. What else did you do while you were in Mrs. Simpson's home? A. What next?

Q. What did you do after you talked to her? You say—did you ask her if she was Mrs. Pearson?

A. No, I asked her what her name was.

Q. And so I take it then, Mr. Greer, you did enter her home without her permission?

Mr. Hepp: I am going to object to that question. I don't know that—that word "permission" is very broad. You could have a license or implied permission. I believe our code specifically states that a trespasser is not required to leave until he is so notified and fails to leave and under our codes I believe that the inference is prejudicial and it is unfair. I object to it.

The Court: Objection overruled. [38]

Witness: Will you repeat that question please?

Mr. Taylor: Read it.

(The question was read to the witness as follows:)

"Q. And so I take it then, Mr. Greer, you did enter her home without her permission?"

Witness: I would say I entered her home with-

(Testimony of Power G. Greer.)

out any objection on her part, because she certainly didn't object.

Q. (By Mr. Taylor): Did you ask her whether you could go into the home or not?

A. I did not.

Q. You walked right in then?

A. Yes, sir; after she was identified as being the one that wrote the note.

Q. Now, just what did you do with that note, Mr. Greer, after you got inside?

A. I folded the note up and put it under the string in the package and placed the package on the table.

Q. Now, how many officers were with you at the time? A. Just one.

Q. Who was that?

A. Marshal McRoberts. [39]

Q. And what did you do while you had the package with the note under the string that was there on the table?

A. I kept my eye on Mrs. Simpson.

Q. Who else was there besides the officer, the one officer?

A. The cab driver and the girl named Betty Austin.

Q. Now, you—I believe you stated you attempted to give this package to Mrs. Simpson?

A. I held it out to her and I said, "Here's your package."

Q. And she then stated that it wasn't her package, is that right?

(Testimony of Power G. Greer.)

A. She hesitated several moments.

Q. What do you mean by "several moments"?

A. Well, she looked at it. She did not take it actually in her hands and after hesitating for several moments, she said, "It isn't mine".

Q. Now, how long is several moments. Tell the jury. Just slap your hand once and slap it again when those several moments elapse.

A. That would be hard to judge, Mr. Taylor. It has been several months since it happened.

Q. You want—

A. She didn't take—answer right up and say "It's mine" or "It isn't mine", or this, that or the other. She just hesitated enough so that it was obvious that she was hesitating. [40]

Q. Two seconds.

A. Yes, I would say so.

Q. That is while she was looking at the package? A. Yes, sir.

Q. And after looking at the package, she says, "It isn't mine"?

A. She kept looking at me and the package and also at the Marshal.

Q. What was Mr. McRoberts doing at that time?

A. He was standing there by me.

Q. Now, Mr. Greer, did you not consider that note as material evidence at the time you got it?

A. I certainly did.

Q. Now, was there anything in that note that would be in favor of Mrs. Simpson?

A. I can't say that there was anything in it. I

(Testimony of Power G. Greer.)

can give you my best recollection as to the contents of the note.

Q. No, we would like to have the note, Mr. Greer.

A. I would too, sir.

Q. What? A. I would, too.

Q. Now, what else did you do at Mrs. Simpson's home?

A. Well, after I discovered that the note was missing, I started looking for it.

Q. Where did you look? [41]

A. Everywhere that I could think of—on my person and I asked Mr. McRoberts if he had it and he looked and said he did not. I asked the cab driver if he had seen it and he said he hadn't.

Q. Did you look any place besides in the kitchen?

A. Yes, I think I did. I looked in the drawers of a night stand table right next to the bed.

Q. You looked in the medicine cabinet in the bathroom? A. Yes, sir.

Q. Looked in the bedroom?

A. In the bedroom.

Q. Did you go through the drawers in the dresser in the bedroom?

A. No, I didn't. I went through the drawers in the little night stand next to the bed.

Q. In other words, you made a search of the premises did you not, Mr. Greer?

A. I did, sir.

Q. And did you have a search warrant to make that search? A. I did not.

(Testimony of Power G. Greer.)

Q. Now Mr. Greer, according to your figures—according to your testimony, there was about 6/7's of an ounce of heroin in that package?

A. Yes, sir, something like that. There was actually 358 grains. [42]

Q. And you say there is 420 grains to an ounce?

A. Yes, sir.

Q. And that would be approximately 6/7's of an ounce, is that right?

A. Yes, sir; something like that.

Q. How do you arrive at that drug—that that drug was of the value of \$1,000?

A. By very simple means, Mr. Taylor. That is a very conservative estimate of it here. Actually, heroin itself is outlawed.

Q. Same as opium and other—

A. No, sir. Opium isn't, but heroin as far as I can remember has—

Q. I just wanted you to answer how you arrived at the value of \$1,000?

A. That's what I am getting at.

Q. Is that the market value?

A. It is not being manufactured at all by reputable drug houses. On the illicit market that's the only way we can arrive at the figures because it is all illicit. On the illicit market in Seattle, it was valued at \$600 by the Bureau of Narcotics. Dope addicts, Mr. Taylor, when they get this heroin, they cut it at least in half.

Q. Had this been cut in half?

A. No, sir; not to my knowledge. [43]

(Testimony of Power G. Greer.)

Q. Why would the value be \$1,000 up here and only \$600 in Seattle?

A. That much difference—

Q. The freight?

A. No, that means differential and that was an estimate before I even weighed it.

Q. Do you remember a conversation in the United States Attorneys office, Mr. Greer, in which I was present and Mr. Hepp, and you stated it was about \$400 worth of heroin in that package?

A. I don't recall that.

Q. You don't recall that? A. No, sir.

Q. I take it then from your testimony, Mr. Greer, at no time can you say that Mrs. Simpson had the actual possession or custody of that narcotic that you seized at the Pan American office?

Mr. Hepp: Now, I object to that as calling for a conclusion of the witness of law. I think that's within the purview of the court to instruct—

Mr. Taylor: Your Honor—

Mr. Hepp: Just a minute, Mr. Taylor—as to what possession in terms of the law implies and what it connotes. I don't think it is a fair question. It calls [44] for a conclusion on the part of this witness and I am going to object to it.

The Court: Objection overruled.

Witness: She had—

Q. (By Mr. Taylor): Just a moment. I say, the actual possession and custody from the time that you got it from the Pan American Airways, did she

(Testimony of Power G. Greer.)

ever have the actual possession and custody of those narcotics?

A. Not physically, no, sir.

Q. What? A. Not physically.

Q. Do you know when that package arrived at the Pan American Airways office in Fairbanks?

A. If I recall, it was on the 7th or 8th. I am not sure about that.

Q. Did you ask Mrs. Simpson if she was Leona —Juanita Pearson? A. I did not.

Q. Now, you mentioned about the signature that was on a mythical note that you have testified to. You said the signature was the same as was on the package. Did you mean that the handwriting was the same or that the name was the same?

A. I meant that the name was the same. [45]

Q. Did you compare the handwriting on the note, the signature, with the address that was on the package?

A. No, sir; I did not.

Q. Mr. Greer, at the time that you searched the premises did you take some money orders and personal correspondence of Mrs. Simpson's?

A. No, sir. I looked at some—not money orders—I looked at some bank drafts, some bank drafts in some bank in California and I asked Mrs. Simpson in reference to them and why the difference in the name and she told me.

Q. And did you not take some of those letters and some of those money order receipts from her home? A. No, sir.

(Testimony of Power G. Greer.)

Q. Did Mr. McRoberts take some of them?

A. Not to my knowledge.

Q. You don't know at the present time whether or not Mr. McRoberts or the District Attorney's office has some of her personal papers and money orders? A. Not to my knowledge.

Q. Now, are you sure that the name signed to the note Mr. Greer was Juanita Pearson?

A. Mrs. Juanita Pearson.

Q. Mrs. Juanita Pearson, is that right?

A. Yes, sir.

Q. But you had to refresh your memory as to that name from [46] the address that was on the package?

A. I had to refresh my memory as to the first name, yes, sir.

Mr. Taylor: That's all.

Re-Direct Examination

Q. (By Mr. Hepp): Mr. Greer, I believe you—in response to a question by Mr. Taylor, you stated in substance that you had had no search warrant when you searched the premises of 642—that is, the home of Leona Simpson? A. That's correct.

Q. Was she under arrest at that time?

A. Yes, sir.

Q. Now, one other question. I believe in response to a question by Mr. Taylor as to whether you were concealed in this back office at the Pan American cargo office, did you say you were concealed in that office?

(Testimony of Power G. Greer.)

A. The door was open but actually I was concealed from the counter of the office.

Q. Could you hear the conversation at the business place of the cargo office? A. Yes, sir.

Q. Did you hear the conversation?

A. Yes, sir. [47]

Mr. Hepp: I believe that's all.

Recross Examination

Q. (By Mr. Taylor): Mr. Greer, what stage of the proceeding in the home of Mrs. Simpson was it you told her that she was under arrest?

A. After she failed to identify the person to whom she stated the package was for.

Q. And—

A. She was placed under arrest.

Q. Did you inform her what the charge against her was? A. Yes, sir.

Q. What did you tell her?

A. I told her who I was and what was in the package and that she was—I would have to arrest her for violating the narcotic law.

Q. Then because she did not answer a question, you arrested her as Juanita Pearson?

A. No, I arrested her as Leona Simpson.

Q. Did you advise her of her rights of a person charged with the crime at the time you arrested her?

Mr. Hepp: I object to that question. I do not think it is necessary or incumbent upon a peace officer to advise. That's a magistrate's office.

The Court: Objection sustained. [48]

(Testimony of Power G. Greer.)

Q. (By Mr. Taylor): After she was placed under arrest, where did you take her, Mr. Greer?

A. I didn't take her anywhere. I told her to get her clothes on so she could go to the District Attorney's office.

Q. Uh-huh. Did you go up there?

A. Yes, sir.

Q. And what took place there, Mr. Greer?

A. Well, we didn't go there directly. We went to the Marshal's office, and called the District Attorney and when the District Attorney appeared, she went into his office.

Q. And what took place in the District Attorney's office?

A. She was questioned by the District Attorney.

Q. And what questions were asked of her, Mr. Greer?

A. Well, principally, questions were asked her in reference to the person to whom she was to keep this package for.

Q. And who asked that question?

A. Mr. Hepp.

Q. And what was her response?

A. She stated she didn't care to answer that question.

Q. And did she make a request for an attorney at that time, Mr. Greer? A. Yes, sir.

Q. And did you attempt at that time to deliver this package to Mrs. Simpson? [49]

A. No, sir.

(Testimony of Power G. Greer.)

Q. What? A. No, sir.

Q. Isn't it a fact, Mr. Greer, that you said, "Here's your package. Do you want to open it up?"

Mr. Hepp: I object. I don't even know what point of time he is talking about, whether he is down there at her residence or up in the District Attorney's office.

Mr. Taylor: Counsel should pay attention and know that we are talking about the conference up in his own office.

Mr. Hepp: I don't believe that is a fair question. I couldn't identify it and I was there and I never heard anything said about a package. I assumed he is talking about—

Mr. Taylor: I am just asking if there was.

The Court: Objection will be overruled.

Witness: No, sir, the package wasn't given to her or even attempted to be given to her.

Q. (By Mr. Taylor): Well, was there such an attempt to give her the package, to open it up in the Marshal's office? [50]

A. No, sir. I opened the package in the Marshal's office myself and showed her the contents.

Q. In her presence? A. Yes, sir.

Q. Isn't it a fact, Mr. Greer, that you did offer her the package at that time?

A. I don't recall that I did.

Q. You might have thought?

Mr. Hepp: I object to that, your Honor, calling for pure speculation.

(Testimony of Power G. Greer.)

The Court: Objection sustained.

Q. (By Mr. Taylor): Well, I will ask you one more question, Mr. Greer. Isn't it a fact that you asked Mrs. Simpson to open that package in the Marshal's office?

A. No. I say I don't recall that I did ask her that.

Mr. Taylor: That's all.

Q. (By Mr. Hepp): Just one moment, Mr. Greer. Now, Mr. Greer, you have purported—in response to Mr. Taylor's question—to cover some of the conversation that was in the District Attorney's office. I would like to ask you if at any time when she was in the District Attorney's office if she was advised of her right to counsel and she didn't have to make any statement? [51]

A. Yes, sir; that was the first thing you told her.

Q. (By Mr. Taylor): But it wasn't the first thing after the arrest, though?

Mr. Hepp: I object to that, your Honor. Counsel knows that has been ruled on. I think he should be admonished for bringing that up.

The Court: Objection sustained.

Mr. Taylor: That's all.

(At this time, Mr. Power G. Greer left the witness stand.)

Mr. Hepp: Ted McRoberts, please.

THEODORE R. McROBERTS

called as a witness in behalf of the Plaintiff, having been first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Hepp): Would you state your name to the jury, sir?

A. Theodore R. McRoberts, known as Ted.

Q. By whom are you employed?

A. Well, Department of Justice, Marshal's office.

Q. Do you know Power Greer?

A. Yes, I do.

Q. Do you know the defendant, Leona Simpson?

A. When I see her. [52]

Q. Were you so employed by the Department of Justice on the 10th day of February of this year?

A. I was.

Q. Did you see Power Greer at any time during that day? A. I did.

Q. Where did you see him?

A. I saw Power Greer in the Pan American office.

Q. I assume by your answer that you were there then?

A. He called me up at the Marshal's office and asked me to come down.

Q. Did you go down there?

A. I did, somewhere around about 10:30.

Q. Was your attention at any time while at the Pan American office attracted to a package that Mr. Greer had entertained an interest in?

A. It was.

(Testimony of Theodore R. McRoberts.)

Q. Did you see that package? A. I did.

Q. Who had the package when you saw it?

A. Power Greer. It was on his desk—on a desk there.

Q. Do you know then of your own knowledge whether or not that package was ever called for by anyone at the Pan American office?

A. Yes, it was.

Q. Who called for the package? [53]

A. Well, somebody called over the telephone for it, but a taxi driver, Brazell, called for it in a Checker cab.

Q. Did he have any indicia of ownership or any claim or right to get the package? Did he show it?

A. He had a letter of authority.

Q. Were you—just yes or no—did you learn from whom he had obtained that authority?

A. Yes.

Q. Now, when the cab driver came into the Pan American office, following his arrival there, would you state to the jury what you did?

A. The Pan American man came in. We were in a little room, connected room, set off from the cargo office, right next door, right by it. Mr. Greer and myself with the package and as I say, the man came in and then we came out with the package. Mr. Greer had the package. He walked out and accosted the taxi driver and told the taxi driver to deliver us to where he got the note.

Q. Did he deliver you there?

(Testimony of Theodore R. McRoberts.)

A. Yes, he did.

Q. Where was that address?

A. 642 - 6th.

Q. Which address?

A. 642 - 6th—4th I mean. Pardon me.

Q. What did you do on your arrival at that address? Did [54] you get—you were in the cab, were you? A. Yes.

Q. Did you get out of the cab?

A. Yes, we got out of the cab and went to the house.

Q. Did you see the defendant there at the house?

A. Yes, I did.

Q. Just yes or no, Mr. McRoberts, did you have or hear any conversation in the presence of this defendant at that time? A. Yes.

Q. Where was that conversation?

A. Just inside the house.

Q. And when was the conversation?

A. Right after we entered the house.

Q. That would be on February 10th?

A. February 10th.

Q. Who was present?

A. The defendant and Greer and Brazell and myself and another girl who give her name as Betty Austin.

Q. Do you have a recollection of that conversation at this time, the substance of it? A. Yes.

Q. Would you state to the jury what was said in the presence of the defendant?

A. Mr. Greer asked Brazell first to point out

(Testimony of Theodore R. McRoberts.)

the lady that gave him—which one of the 2 ladies gave him the note [55] and he pointed out the defendant and then Mr. Greer took the package over to the defendant and with the note opened up and asked her if she had written and signed that note and she admitted she had. So, he said, "Here's the package" and she didn't—wouldn't take the package. She said the package wasn't hers, that she was just getting it for someone else.

Q. Was she asked for whom she was getting the package? A. Yes.

Q. Did she respond to that question?

A. No, she did not.

Q. I show you government's identification number 2 and ask you to examine it please (handed to witness). State if you know what it is?

A. Yes. This was the wrapper on the package that we delivered.

Q. You saw that wrapper when it was around the package, did you? A. Yes, I did.

Q. Do you know of your own knowledge, Mr. McRoberts, what was in that package?

A. Well, there was quite a bit of paper in there and packing and there was a little wooden curved box in there and a—also a package—an envelope of some white powder that Mr. Greer said was heroin. [56]

Q. Oh, you have testified concerning this note. Do you have that note, Mr. McRoberts?

A. No, I haven't.

Mr. Taylor: Just a moment. We are objecting

(Testimony of Theodore R. McRoberts.)
to any testimony regarding this note as under the—
not the best evidence.

The Court: Objection overruled.

Q. (By Mr. Hepp): You say you don't have the
note? A. No.

Q. Do you know where it is?

A. No, I don't. Mr. Greer lost it at the time or
mislaid it or something.

Q. Where did you last see that note?

A. I last saw the note when he showed it to the
defendant here.

Q. And that was the time you testified here
when you went down there? A. Yes.

Q. I show you government's identification num-
ber one, Mr. McRoberts and ask you if you can
identify it please (handed to witness).

A. Yes.

Q. Examine it.

A. This is the wooden box that was packed in
the big box. [57] This is the package we were re-
ferring to—talking about.

Q. When did you see first those contents?

A. I saw this first at the Pan American office.

Q. When? A. On February 10th.

Q. I see. And that is—is that the box around
which this wrapper that you have testified concerning
was placed? A. Yes, that is.

Q. Is this the little wooden container you have
testified to? A. Yes.

Mr. Hepp: You may question this witness.

(Testimony of Theodore R. McRoberts.)

Cross-Examination

Q. (By Mr. Taylor): Mr. McRoberts, at whose request did you go to the Pan American Airways about 10:30 on the morning of the 10th of February, 1951? A. Mr. Greer.

Q. And you say that when you walked in there, there was a package on a desk in the—where Mr. Greer was? A. Yes.

Q. Where was that desk? What room was it in?

A. Right behind—you go behind the counter of the Pan [58] American cargo office and it is a little door beyond the office to the right, right behind the counter.

Q. That was concealed from the main office, was it?

A. Yes, yes, pretty much from the front of the office. It isn't concealed from the—from back of the counter, no.

Q. Now, Mr. McRoberts, about what time was it that taxi driver came into the Pan Am office?

A. About 12:30 I believe.

Q. And did you see him come into that office?

A. Yes. I was—I didn't see him come in the door. We were sitting back where you're looking out this door and I heard him come in the door to the counter.

Q. And what did he say when he came to the—

A. He delivered the note to the cargo man and asked for a package that he was to get.

Q. And the cargo man brought the package to

(Testimony of Theodore R. McRoberts.)

you then? A. No, he brought the note to us.

Q. To you? A. To Mr. Greer.

Q. What was the signature on that note, Mr. McRoberts? A. Juanita Pearson.

Q. Did you ever know of a Juanita Pearson in Fairbanks? A. No.

Q. Have you made any investigation to ascertain who Juanita Pearson is? [59]

A. Yes, limited.

Q. Now, what investigation did you make to ascertain whether a Juanita Pearson—

A. We just made inquiries.

Q. Whereabouts?

A. Well, I don't know. The deputies would make inquiries around here and there and I asked different people I knew. That's all. I looked through the telephone directory.

Q. Did you check the hotels? A. No.

Q. Or the passenger lists of the air companies serving out of here? A. No.

Q. Now, I believe you stated that you rode in the taxi cab to 642 - 4th? A. Yes.

Q. And what did you first see when you arrived at 642 - 4th?

A. Well, when we got out, the door was partly open and somebody was looking out the door when we got out of the cab and then we walked up to the door. Mr. Greer led the way.

Q. What?

A. Mr. Greer led the way and we walked up to the door.

(Testimony of Theodore R. McRoberts.)

Q. And where did you go then?

A. We went inside. [60]

Q. And what was said about you and Mr. Greer going into Mrs. Simpson's home?

A. To my memory, nothing. I don't recall anything.

Q. Did you just walk inside—right on in?

A. Yes, the door was open and we walked in.

Q. Did you see a dog outside there?

A. Yes, I think probably she had put the dog out or the dog had come out. The door was open anyway, whether she put it out or whether it come out.

Q. When the dog went out, you went in?

Q. Now, Mr. McRoberts, are you sure at the time Mr. Greer asked Mrs. Simpson if she had written that note that he asked her whether she had written the note, or, whether she had just given the taxi driver the note?

A. He asked her if she had signed that note and had given the taxi driver the note. He asked her both.

Q. And what did she say to that?

A. She hesitated a little bit and said yes.

Q. How long did she hesitate?

A. Well, just a matter of—probably a matter of seconds.

Q. Was there any conversation with the taxi driver before Mr. Greer had the conversation with Mrs. Simpson?

(Testimony of Theodore R. McRoberts.)

A. Mr. Greer asked the taxi driver to take us to where he got the note. [61]

Q. And after they arrived at 642 - 4th, did Mr. Greer have any conversation with the taxi driver there?

A. He asked the taxi driver to point out the woman that give him the note.

Q. What did Mr. Greer do with this note after he got inside, Mr. McRoberts?

A. I do not know. The last I saw of it was when he showed it to the defendant.

Q. Did you search for the note?

A. Afterwards when we were ready to leave, he asked me if I had the note, if he had handed the note to me and I said no.

Q. And this search you made, how extensive was that, Mr. McRoberts?

A. Just looked around the room where he was and where he left the package.

Q. Did you look in the medicine cabinet in the bathroom to see if the note was there?

A. I don't recall.

Q. Did you look in the dresser drawers or drawers of any sort around there?

A. To see a note?

Q. Looking for anything? Were you looking for that or other things?

A. Oh, yes; we looked through the dresser drawers. [62]

Q. In fact, you searched the place, did you not?

A. Searched for narcotics.

(Testimony of Theodore R. McRoberts.)

Q. And you found some money orders and receipts, did you not, Mr. McRoberts?

A. I believe there was some telegraphic receipts, money telegrams.

Q. And some letters?

A. Yes, the letters were stamped to be mailed.

Q. And you took those letters? A. Yeah.

Q. Did you take any letters that had been addressed to Mrs. Simpson?

A. I don't recall any letters. Whether Mr. Greer did or not, I do not know. I didn't. He handed me some stuff and told me to keep it for him.

Q. Isn't it a fact, Mr. McRoberts, that you had in your possession or possibly still have them, certain money order receipts and telegraphic receipts and letters belonging to Mrs. Simpson?

Mr. Hepp: Just a minute, Mr. McRoberts. I am going to object to this unless counsel can show how it relates into the issues before this court. I don't see that there is any reason—it is time consuming, but I think counsel should show where in this trial it is related in order to properly offer this kind of evidence. [63]

The Court: Objection overruled.

Witness: Will you state that question again please?

Mr. Taylor: Read the question, Mr. Reporter.

(The question was read to the witness as follows:)

"Q. Isn't it a fact, Mr. McRoberts, that you

(Testimony of Theodore R. McRoberts.)

had in your possession or possibly still have them, certain money order receipts and telegraphic receipts and letters belonging to Mrs. Simpson?"

Witness: No, I haven't them in my possession.

Q. (By Mr. Taylor): What did you do with those items?

A. Well, I returned the—the boys returned it to Mrs. Simpson when we turned her loose.

Q. Now, Mr. McRoberts, was there any letters, money order receipts, or any other written memoranda around that house that had the name of Juanita Pearson?

A. Not to my knowledge.

Q. You did not see any? A. No.

Q. You did make an extensive search of the premises, did you? [64]

A. Fair, yes, uh-huh.

Mr. Taylor: That's all.

Mr. Hepp: I believe that's all. May we have a few minutes recess, your Honor?

The Court: Yes, we will take a 10 minute recess.

(At this time, a short recess was taken and thereafter the trial of this cause was resumed.)

The Court: Counsel stipulate all members of the jury are present?

Mr. Taylor: Yes, your Honor.

Mr. Hepp: We will so stipulate, your Honor.

(Testimony of Theodore R. McRoberts.)

The Court: Very well. Ready to continue the case?

Mr. Hepp: Ready.

Mr. Taylor: Yes, your Honor.

The Court: Very well.

Mr. Hepp: Mr. Brazell, please.

JAMES R. BRAZELL

called as a witness in behalf of the Plaintiff, having been first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Hepp): Would you state your name to the jury please?

A. James Russell Brazell.

Q. Where do you live, Mr. Brazell?

A. 1518 Cushman.

Q. That's in Fairbanks, is it?

A. Fairbanks, Alaska.

Q. How long have you lived around these parts?

A. I lived here—I have been here a year ago yesterday.

Q. What is your occupation? What do you do?

A. Cab driver.

Q. What company do you drive for?

A. Now, I drive for Radio. I have drove for Checker before.

Q. On or around the date of February 10th, for whom were you driving?

A. I was driving for Checker Cab.

Q. Do you know Leona Simpson, the defendant, here? A. I have seen her, yes.

(Testimony of James R. Brazell.)

Q. Tell me Mr. Brazell, did you have occasion to transact any business with Leona Simpson on the 10th day of February of this year?

A. Yes, I did.

Q. Will you state what brought that about?

A. On the 10th, she called the office for a cab and they sent me to her house. She gave me a note and I went to Pan American with it. [66]

Q. Did she state to you what you were supposed to do with the note or what it was for?

A. She said she had a package in the cargo office and she had to sign a note for me.

Q. Did you go and get the package?

A. I did, yes.

Q. About what time of the day was that, sir?

A. Well, it was just before noon, I believe.

Q. What occurred—you went to the Pan American cargo office or some—

A. I went to the one here in town behind the Nordale.

Q. I see. What happened when you got there?

A. I gave the note to the kid that worked there and he took it to the back room and they come out in a little while. Two fellows come in and got me.

Q. Do you know who they were?

A. Mr. Greer and Mr. McRoberts.

Q. Do you know who—what their status was?

A. I didn't at the time, but they told me.

Q. What happened then?

A. Well, they asked me where I got the note and they asked me if I got it at that address that was

(Testimony of Theodore R. McRoberts.)

(Testimony of James R. Brazell.)

on the note and I said no and he asked me where I got it and I told him.

Q. Then what happened?

A. I told him it was from 642 4th and I was to take the [67] package back.

Q. And did—

A. He asked where I was to take it. I said 642 4th and he said, "Good, I'll go right along with you."

Q. Did he go along with you?

A. Yes, he did, him and Mr. McRoberts.

Q. Where did you go to?

A. I went to 642 4th and parked in front.

Q. And would you just state what happened starting with—did you get out of the car?

A. I think Mr. Greer got out first and I got out second and then Mr. McRoberts got out behind me.

Q. And what happened then. Please state it for the jury.

A. Then we went to the door. Mr. Greer went in first, I was second and McRoberts followed and he asked her if she wrote that note and she said yes. And he asked her if she had me to get the package for her and she said yes, she did. He asked her if that was her package and she said no, it wasn't hers. So then he told her that—what was in the package and I think he told her she was under arrest and that she would have to go with him.

Q. Now, I ask you to look at the defendant here and state whether or not she is the Leona Simpson that you have been talking about?

(Testimony of James R. Brazell.)

A. Yes, she is. [68]

Q. She is the one that gave you the note?

A. Yes, sir.

Mr. Hepp: You may question this witness.

Cross Examination

Q. (By Mr. Taylor): Did you see her write the note, Mr. Brazell?

A. No, I did not see her write the note. They called me over there and when I got there, she gave it to me and explained why she gave it to me.

Q. Did she explain to you that it was a package for another person?

A. No, at the time she didn't because when they showed me the note over there, that's the first time I had looked at it and then that's why they asked me and I told them it went back to 642 4th.

Q. Did you read the note before you went to the Pan Am office? A. No, sir; I did not.

Q. Was it in an envelope?

A. No, sir; it was just folded.

Q. And you don't know how long prior to the time that you went down there that that note was written then, do you Mr. Brazell? [69]

A. No, I don't.

Q. Now, from your scrutiny of that note and the way it was folded, would you be led to believe that that note had been written a considerable time before?

Mr. Hepp: Just a minute. I object to that as calling for a pure conclusion. I don't know how this

(Testimony of James R. Brazell.)

witness can tell by looking at a note how long ago it had been written. I object to it for that reason.

The Court: Let him answer it if he can.

Witness: I don't honestly know. It had been written and folded. It was just a note and it had been folded.

Q. (By Mr. Taylor): What was the condition of the paper as to being clean and smooth or rumpled?

A. It was very clean. It was very smooth.

Q. While you were at the Pan Am office, did you pick up any package, Mr. Brazell?

A. No, I did not.

Q. Did you at any time have that package that is on the table there in your possession?

A. No, I didn't.

Mr. Taylor: No more questions.

Mr. Hepp: That's all. [70]

(At this time, Mr. James Brazell left the witness stand.)

Mr. Hepp: Mr. Barnes, please.

JERRY BARNES

called as a witness in behalf of the Plaintiff, having been first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Hepp): Would you state your name to the jury please? A. Jerry Barnes.

Q. Where have you worked, Mr. Barnes?

A. At present I work for Northern Consolidated Airlines.

(Testimony of Jerry Barnes.)

Q. How long have you lived around these parts, Mr. Barnes? A. Two years.

Q. By whom were you employed on February 10th of this year?

A. Pan American Airlines.

Q. And where was your station of work?

A. The cargo office in the Nordale Hotel.

Q. Mr. Barnes, I am going to show you government's identification number two (handed to witness) and ask you to examine it and state whether or not you have ever seen that in the course of your duties? A. Yes, I have seen it.

Q. When did you see that? [71]

A. When it arrived at Fairbanks by Pan American aircraft.

Q. It came in on a Pan American aircraft, you say? A. Yes, sir.

Q. Did you have that package down in the cargo office at Pan American? A. Yes, we did.

Q. Do you know whether or not that package was ever delivered to anyone?

A. It was, certainly.

Q. The package around which that—

A. Yes, sir, it was.

Q. To whom was it delivered?

A. Delivered to a cab driver.

Q. Did this cab driver show any indicia or ownership or claim or right to the delivery of this package?

Mr. Taylor: Just a moment. We are objecting to

(Testimony of Jerry Barnes.)

the question as calling for a conclusion of the witness, incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Q. (By Mr. Hepp): Would you answer the question please?

A. The cab driver presented a letter of authorization from the addressee giving us the authority to give him the package.

Q. Did you see that letter? A. I did. [72]

Q. What did you do when you saw that letter, Mr. Barnes?

A. Well, I read it, saw it contained the material it should contain and had him sign the airway bill and proceeded to get the package.

Q. I see. And in that regard, what did you do?

A. Well, Mr. Greer was very near-by so I went to get him. He had possession of the package at that time and he brought the package out and gave it to the cab driver. He didn't give it to the cab driver. He took the situation over as of that time.

Q. Was anyone in the company of Mr. Greer?

A. Yes, the Marshal at that time, Ted McRoberts.

Q. I see. Do you know when this package was received in Fairbanks.

A. The 7th of February in the morning.

Q. That is of this year? A. This year.

Q. Tell me Mr. Barnes, did you ever receive any inquiry by any means concerning this package from anyone?

A. On the morning of the 10th.

(Testimony of Jerry Barnes.)

Q. On the morning of the 10th?

Mr. Taylor: Your Honor, I am going to object unless—inquiry into what matter?

Q. (By Mr. Hepp): I believe you have testified concerning the package, [73] the wrapper of which you have identified here? A. That's right.

Q. Did you receive any inquiry concerning that package, Mr. Barnes?

Mr. Taylor: Just answer yes or no.

Witness: Yes.

Q. (By Mr. Hepp): When did you receive the inquiry?

A. The morning of the 10th of February.

Q. And by what means did you receive the inquiry? A. Over the telephone.

Q. Was it—were you able to determine whether it was a male or a female voice?

Mr. Taylor: Just a moment, your Honor. I am going to object to the question, incompetent, irrelevant and immaterial; calling for a conclusion of the witness.

The Court: Objection overruled.

Q. (By Mr. Hepp): Would you answer that question please?

A. As far as I could determine, it was a female voice.

Q. Did this voice identify itself?

A. I can't remember for sure just whether she identified herself directly or not, but I assumed that it was the person to whom the shipment was consigned. [74]

(Testimony of Jerry Barnes.)

Q. Was the conversation relating to the delivery or other disposition of this package?

A. She wanted to know if the shipment was in. I told her it was and she told me she would send somebody down to pick it up.

Q. What did you say in response to that?

A. I told her she would have to have a letter of authorization for anyone other than herself to have it picked up.

Q. Did that conclude that conversation?

A. Yes.

Mr. Hepp: You may question the witness.

Cross Examination

Q. (By Mr. Taylor): Is it—was it the policy of the company for another party to pick up a package that they have a letter of authorization?

A. Generally, no.

Q. Why did you have to have a letter of authorization to deliver that package to the taxi driver?

A. I was acting on the instructions of Mr. Greer.

Q. Did you retain that letter in your files at the Pan American, Mr. Barnes? A. I did not.

Q. Now, you say that at the time you went to get the package that Mr. Greer had possession of it?

A. That's right.

Q. And how long had he had possession of it?

A. You mean in hours and minutes?

Q. Days.

A. It wasn't days. I don't know just how long it was.

(Testimony of Jerry Barnes.)

Q. Isn't it a fact that he picked that package up on the morning of the 9th of February?

Mr. Hepp: I object to that unless there is a showing this witness knows something about that. I don't think there is a proper foundation for that kind of a question.

The Court: Objection overruled.

Witness: What was the question?

Mr. Taylor: Will you read the question, Mr. Reporter?

(The question was read to the witness as follows:)

"Q. Isn't it a fact that he picked that package up on the morning of the 9th of February?"

Witness: It was either the morning or the evening. It was on the 9th I believe that he picked it up. [76]

Q. (By Mr .Taylor): The day before the taxi driver came for it?

A. I believe so, the day before.

Q. And did he return the possession of that package to you or to the Pan American Airways prior to the time that the taxi driver came there?

A. I don't know. Mr. Greer took full control of the situation and I had nothing to do but continue on with my ordinary duties.

Q. Did Mr. Greer show you authorization to take care of that package?

(Testimony of Jerry Barnes.)

A. He showed his identification. I consider that authorization enough.

Q. What?

A. I considered that authorization enough.

Q. Without a search warrant?

Mr. Hepp: I object to that. There is—I think the court has ruled on that matter before and—

The Court: Yes.

Mr. Hepp: —as to the matter of a search warrant.

The Court: Objection sustained.

Q. (By Mr. Taylor): And then you got a telephone call about that and you assumed it was a lady by the name of Juanita Pearson that [77] called you?

A. That's correct.

Mr. Taylor: That's all.

Mr. Hepp: No further questions.

(At this time, Mr. Jerry Barnes left the witness stand.)

Mr. Hepp: Mr. Harris, please.

MELVIN G. HARRIS

called as a witness in behalf of the Plaintiff, having been first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Hepp): Would you state your name to the jury, sir?

A. Melvin G. Harris.

Q. Where do you live, Mr. Harris?

A. Fairbanks, Alaska.

(Testimony of Melvin G. Harris.)

Q. How long have you lived around these parts?

A. Five years.

Q. By whom are you employed?

A. Pan American World Airways.

Q. And how long have you been so employed?

A. Four years.

Q. What is your station of duty?

A. Nordale Hotel, Fairbanks. [78]

Q. Were you at your office or at your work around the early part of February of this year?

A. I was.

Q. What is your position incidentally?

A. Cargo traffic supervisor.

Q. Sir? A. Cargo traffic supervisor.

Q. I show you government's identification number 2 (handed to witness) and ask you to examine it please and state if you have ever seen that before?

A. Yes, that came in on our station approximately February 7th.

Q. Is that of this year? A. This year.

Q. Was—would you—is that just a wrapper—

A. That's a wrapper off of a package moved on freight bill 516533 which weighed approximately one pound.

Q. To whom was the package addressed?

A. Mrs. Juanita Pearson, Fairbanks, Alaska.

Q. To your knowledge Mr. Harris, was that package ever delivered to anyone?

A. That package was delivered to—let's see. It

(Testimony of Melvin G. Harris.)

was in the custody of the United States Treasury February 9th.

Q. Do you know the name of the—— [79]

A. Mr. Greer.

Q. Do you know when he took custody or when he was given custody of this package?

A. It was on February 9th.

Q. On February 9th? A. That's right.

Q. Did you ever see the package again?

A. Yes. On February 10th, he returned the package still in his custody to our office.

Q. Do you know of your own knowledge Mr. Harris whether or not anyone ever called for that package for the delivery of it?

A. I wasn't there at the time. I was out to lunch.

Q. I see. Do you know of your own knowledge what that package contained?

A. Inside the package was a small box. I guess you would call it a powder box. There was small wrapping paper or some kind of white powder. I couldn't say what it was.

Q. Had the package been broken or something?

A. The package was damaged at the time that it was first tendered for delivery to Mr. Greer and because it was damaged, it was opened for inspection to determine the exact damage to the contents.

Q. You say this is the wrapper around——

A. That's correct. [80]

Q. Do you know the defendant, Leona Simpson?

A. No, I don't.

Q. And I will show you a portion of govern-

(Testimony of Melvin G. Harris.)

ment's identification number one (handed to witness) and ask you to examine it and I will show you the whole identification (handed to witness). State if you recognize or know what this is, Mr. Harris?

A. That is the carton that traveled under that weigh bill assigned to Juanita Pearson.

Q. You recognize it as having seen it before?

A. Yes.

Mr. Hepp: I have no further questions.

Cross Examination

Q. (By Mr. Taylor): Mr. Harris, at the time that Mr. Greer brought this package back to the Pan Am office, did he still retain the possession of it or did he put it back in the possession of the Pan American Airways?

A. He still retained possession.

Q. So then, from the morning of the 9th of February, Mr. Greer had the possession of this package? A. That's correct.

Mr. Taylor: That's all. [81]

Redirect Examination

Q. (By Mr. Hepp): Well Mr. Harris, would that have been possession or custody?

A. I imagine you would call it custody.

Q. Did he claim any ownership in that package?

A. No, he did not.

Q. Did he assume by any statement that he made any ownership or right of possession other than in the course of his duties?

(Testimony of Melvin G. Harris.)

Mr. Taylor: Just a moment, Mr. Harris. We are going to object to the question as calling for a conclusion of the witness and assuming something not in evidence.

Mr. Hepp: Your Honor, counsel has been doing that—indulging in that all the way through this trial and I just want to establish what type of possession or custody or control it is.

Mr. Taylor: This—

Mr. Hepp: I think I have a right to go into a matter he has raised.

Mr. Taylor: I didn't raise it, your Honor.

The Court: What was the question [82] now?

Mr. Hepp: My question was whether he had done any act or made any statement that indicated an ownership or a possession that was over and above which his official duties called for.

Mr. Taylor: That is too inclusive, your Honor.

The Court: Objection will be overruled. You may answer.

Witness: He, on February 9th when the package was originally turned over to him, showed his identification to me as a treasury agent and said he was taking custody of the package for the government.

Mr. Hepp: That's all.

Recross Examination

Q. (By Mr. Taylor): And from then on Mr. Harris, it was in his possession, is that right?

A. That's correct.

(Testimony of Melvin G. Harris.)

Mr. Taylor: I see. That's all.

Mr. Hepp: No further questions.

(At this time, Mr. Harris left the witness stand.)

Mr. Hepp: Mr. Hugo Ringstrom please. [83]

HUGO RINGSTROM

called as a witness in behalf of the Plaintiff, having been first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Hepp): Would you state your name to the jury, sir? A. Hugo Ringstrom.

Q. Where do you live, Mr. Ringstrom?

A. Seattle, Washington.

Q. How long have you lived there?

A. 26 years.

Q. By whom are you employed?

A. By the Alcohol Tax Unit, Federal Government.

Q. Is that any relation to the Treasury Department, Mr. Ringstrom?

A. It is part—it is in the Treasury Department.

Q. How long have you been employed in that Tax Unit—Alcohol Tax Unit?

A. Since the unit was formed and in similar work since 1923.

Q. What type of work do you do?

A. Analytical work.

Q. Could you state that in terms more familiar
— [84]

(Testimony of Hugo Ringstrom.)

A. Analyze alcoholic liquors and narcotics.

Q. Is that related to the field of chemistry?

A. Yes, sir.

Q. Tell me Mr. Ringstrom, do you hold—have you ever been schooled in the field of chemistry or this analytics as you called them?

A. Yes, sir.

Q. Where did you receive your training?

A. School of Chemistry, University of Minnesota.

Q. Do you hold any degrees in the field of chemistry? A. Yes, sir.

Q. What degrees do you hold?

A. Bachelor of Science and Master of Science in chemistry.

Q. I see. Now, since your employment began with the department, have you always worked in this field? A. Yes, sir.

Q. It always has been in the same field as a chemist, has it? A. Yes, sir.

Q. Could you state to the jury approximately how many analyses of narcotics you have made in the course of your employment?

A. I can merely make a rough estimate—several thousand—four or five thousand.

Q. I show you government's identification number three [85] (handed to witness) and ask you to examine it. State if you have ever seen that before.

A. I have.

Q. Where did you see that?

(Testimony of Hugo Ringstrom.)

A. In the Alcohol Tax Unit laboratory in Seattle, Washington.

Q. Was there anything in that—what is that please, Mr. Ringstrom?

A. That is a registered envelope.

Q. Was there anything contained in the envelope when you saw it first? A. Yes, sir.

Q. What was in it, sir?

A. Locked sealed envelope that the narcotic officers use.

Q. And what was—was there anything in that envelope? A. Yes, sir.

Q. What was in that, sir?

A. A paper bag containing white powder.

Q. Did you do any act in analyzing what that white powder was? A. Yes, sir.

Q. What did you do?

A. I made the necessary tests to determine what it was.

Q. Did you learn what it was?

A. Yes, sir. [86]

Q. What was it?

A. Heroin hydrochloride.

Q. What does that—would you explain what heroin hydrochloride is? What is that, a compound?

A. It is a sort—heroin hydrochloride is a sort of heroin.

Q. Is heroin an organic compound? What is heroin? A. It is a narcotic.

Q. I see. What is—what does the word hydrochloride signify?

(Testimony of Hugo Ringstrom.)

A. That is the salt formed with heroin and hydrochloric acid.

Q. Is that a common combination found in narcotics?

A. It is the only combination I recall ever having run across in the case of heroin.

Q. Do you know how much, by weight, white powder was in this envelope? A. Yes, sir.

Q. How much? A. 358 grains.

Q. In relation to an ounce, how much would that be?

A. It is little more than $\frac{3}{4}$'s of an ounce.

Q. Mr. Ringstrom, in the course of your duties, have you—do you have any idea or knowledge of the market value either illicit or licit market value of that powder? [87]

Mr. Taylor: Just a moment, Mr. Ringstrom. We are going to object, your Honor, as to the value of this compound as irrelevant, incompetent and immaterial and has no bearing upon this case.

The Court: What is the relevancy of it?

Mr. Hepp: I will withdraw the question, your Honor. It is not important.

Q. (By Mr. Hepp): What did you do with the powder after you analyzed it, Mr. Ringstrom?

A. I kept it in my safe.

Q. Do you know where it is now?

A. Yes, sir.

Q. Where is it? A. In my pocket.

Q. Would you produce it please?

(Testimony of Hugo Ringstrom.)

(Locked sealed envelope handed by witness
to Mr. Hepp.)

Mr. Hepp: I would like to have this marked
for identification.

Clerk of the Court: Government's identification
number four.

(At this time, a locked sealed envelope was
introduced and marked as Government Identifi-
cation [88] No. 4.)

Q. (By Mr. Hepp): I have here government's
identification number four, Mr. Ringstrom and ask
you to open it and inspect it and examine it at this
time and state if you know what it is.

A. Yes, I know what it is.

Q. What is it please?

A. This is the locked sealed envelope contain-
ing the bag with heroin hydrochloride in it that was
inside of the registered envelope that came to me
from agent Greer.

Q. What is inside the—that locked sealed en-
velope that you are talking about?

A. A bag containing heroin hydrochloride.

Q. Does that powder have an odor?

A. No, sir.

Q. I believe you have stated that it is a nar-
cotic. I would like you to make that statement if you
haven't. A. It is a narcotic.

Q. Would you include the word "narcotic drug"
in that?

(Testimony of Hugo Ringstrom.)

A. Sometimes it is referred to as a drug also.

Q. Is heroin legitimately manufactured now, Mr. Ringstrom? A. No, sir, it is not.

Q. Incidentally Mr. Ringstrom, referring back to this government's identification number three that you have testified was a registered envelope, do you know where that has [89] been since you have received it? A. Yes, sir.

Q. Where has it been, sir?

A. In my possession.

Q. Did you ever surrender the possession of that? A. No, sir.

Q. Your—you brought it here—

A. Until I brought it to court.

Q. Mr. Ringstrom, do you know why heroin is not legally manufactured?

Mr. Taylor: Just a moment, your Honor. We are going to object to the question as incompetent, irrelevant and immaterial. It has no bearing upon the issues and it is prejudicial.

The Court: Where—what is the relevancy of it?

Mr. Hepp: If counsel objects to it, I will withdraw the question.

The Court: Very well.

Mr. Hepp: You may question the witness.

Mr. Taylor: No questions.

(At this time, Mr. Hugo Ringstrom left the witness stand.)

Mr. Hepp: At this time, your Honor, [90] I offer into evidence plaintiff's identification number

one which has been described as a container delivered through Pan American office.

Mr. Taylor: No objection.

The Court: May be admitted.

Clerk of the Court: Plaintiff's Exhibit "A".

(At this time, Plaintiff's Identification No. 1 was offered into evidence and marked as Plaintiff's Exhibit "A".)

Mr. Hepp: At this time, I offer government's identification number two being described as the wrapper of the package that is identified as number one.

Mr. Taylor: No objection.

The Court: May be admitted.

Clerk of the Court: Plaintiff's Exhibit "B".

(At this time, Plaintiff's Identification No. 2 was offered into evidence and marked as Plaintiff's Exhibit "B".)

Mr. Hepp: At this time, I offer into evidence plaintiff's identification number three being identified as a registered envelope.

Mr. Taylor: No objection.

The Court: May be admitted. [91]

Clerk of the Court: Plaintiff's Exhibit "C".

(At this time, Plaintiff's Identification No. 3 was offered into evidence and marked as Plaintiff's Exhibit "C".)

Mr. Hepp: At this time, I offer government's identification number four being a locked sealed envelope in which there is contained a narcotic.

Mr. Taylor: No objection.

The Court: May be admitted.

Clerk of the Court: Plaintiff's Exhibit "D".

(At this time, Plaintiff's Identification No. 4 was offered into evidence and marked as Plaintiff's Exhibit "D".)

Mr. Hepp: The government rests its case.

Mr. Taylor: If the court please, I would like to make a motion out of the hearing of the jury.

The Court: The jury will retire in the hallway and remain until notified to return.

(At this time, the jury left the courtroom.)

Mr. Taylor: If the court please, at this time I would like to make—move for this court for [92] an order directing a verdict of acquittal upon the grounds of a total failure of proof to show the possession or the custody or control of the narcotics mentioned in plaintiff's complaint.

(Mr. Taylor continued with his argument to the court.)

(At the conclusion of Mr. Taylor's argument, Mr. Gilbert on behalf of the government presented his argument to the court resisting the motion.)

(Mr. Taylor presented further argument to the court on behalf of the defendant.)

(Mr. Hepp presented further argument to the court on behalf of the government.)

The Court: I think that there has been no crime of the—no proof of the crime alleged in the information, that is, the possession or control of the narcotic, but I believe that there has been proved an attempt to commit that crime which is covered by our general laws. The section that Mr. Taylor has just cited doesn't take away the right to prosecute under the attempt as an included crime in the information. So, I will instruct the jury when we get down to the final instructions that there is no crime as charged, but there is an included crime. I will therefore overrule your motion to that extent. We will take a 10 minute recess. Tell them to be in their seats in 10 [93] minutes.

Mr. Taylor: Your Honor, I wonder if it would be possible to adjourn until tomorrow morning. After a 10 minute recess, we will have very little time to—

The Court: Very well. Call them in then.

(The jury re-entered the courtroom.)

The Court: Counsel stipulate all members of the jury are present?

Mr. Taylor: Yes, your Honor.

Mr. Hepp: We will so stipulate.

The Court: We are going to adjourn in a moment until ten o'clock tomorrow morning.

(At this time, the court duly admonished the jury.)

The Court: Make the adjournment.

Clerk of the Court: Court is adjourned until 10 o'clock tomorrow morning.

(At 4:25 o'clock p.m., the trial of this cause was adjourned until 10 o'clock a.m. on Tuesday, May 15, 1951.)

Be It Remembered, that upon the 15th day of May, 1951 at the hour of 10 o'clock a.m., the [94] trial of this cause was resumed, the defendant being in court in person and represented by counsel, the Honorable Harry E. Pratt, District Judge, presiding:

The Court: Call the roll of the jury.

(Whereupon, the Clerk of the Court proceeded to call the roll.)

Clerk of the Court: They are all present, your Honor.

The Court: Counsel ready to proceed with the trial.

Mr. Taylor: Yes, your Honor.

Mr. Hepp: Ready, your Honor.

The Court: Very well.

Mr. Taylor: If the court please, the defendant rests. At this—out of the presence of the jury, I would like to make a motion to the court please.

The Court: Very well. The jury will retire until called please.

(At this time, the jury left the courtroom.)

(At this time, Mr. Taylor on behalf of the defendant renewed his motion for a directed verdict in favor of the defendant.)

(At the conclusion of Mr. Taylor's argument, Mr. Hepp presented argument to the court resisting [95] defendant's motion.)

(Mr. Taylor presented further argument to the court on behalf of the defendant.)

The Court: I think the section that counsel has just read doesn't bar them from prosecuting for an attempt to commit another crime. All throughout our laws, there are crimes which are denounced and then if there is merely an attempt to commit the crime, why then it falls under the general section as to an attempt to commit a crime and it would be rather unusual to have this one crime in which you couldn't prove an attempt to commit it. Motion will be denied. Call the jury.

Mr. Hepp: We are willing to waive the reporter taking the arguments of this cause.

Mr. Taylor: I will waive it.

The Court: Very well.

(The jury re-entered the courtroom.)

The Court: Counsel stipulate all members of the jury are present?

Mr. Taylor: Yes, your Honor.

Mr. Hepp: We will so stipulate.

The Court: Very well. Mr. Reporter, under stipulation of counsel, you may be excused from taking the argument.

(At this time, the court stenographer [96] left the courtroom.)

(Counsel for the government and the defendant presented their arguments to the jury.)

The Court: Counsel stipulate that all members of the jury are present?

Mr. Taylor: Yes, your Honor.

Mr. Hepp: We will so stipulate.

(At this time, the court read the instructions to the jury as follows:

[Title of District Court and Cause.]

INSTRUCTIONS TO THE JURY

1.

(a) The defendant is charged, in the information in this case, with having had unlawful possession and control of a narcotic drug, to-wit: heroin, upon the 10th day of February 1951 in the Fairbanks Precinct, 4th Division, Territory of Alaska;

(b) The jury is instructed that there is insufficient [97] evidence in this case to warrant finding the defendant guilty of the crime charged in said information and that therefore the jury should find the defendant not guilty of the crime charged in said information.

2.

(a) The law of Alaska provides that in a trial upon an information or indictment for a crime, the jury may find the defendant not guilty of the crime charged but guilty of an attempt to commit the crime charged in the information or indictment if

the evidence in the case proves the defendant to be guilty of such an attempt;

(b) You the jury should ascertain from the evidence in this cause whether or not the defendant is guilty of an attempt to commit the crime charged in the information on file in this cause and mentioned above in paragraph (a) of instruction number one.

3.

(a) The law of Alaska provides that if any person attempts to commit a crime and in such attempt does an act toward the commission of such crime but fails or is prevented or intercepted in the perpetration thereof such person, if proven guilty of such attempt beyond a reasonable doubt, shall be punished as provided by law.

(b) To constitute an attempt to commit a crime there must be something more than a mere intention to commit the [98] offense and there must be something more than a mere preparation to commit the offense. There must be such an overt act done in the commission of said crime which falls short of completing the act. Such act need not be the last proximate act before the consummation of the offense but it must be some act directed toward the commission of the offense after the preparations have been made.

(c) An overt act as mentioned in the last preceding sub-paragraph is one done to carry out the intention to commit the crime and it must be such as would naturally effect that result unless prevented by some extraneous cause.

4.

(a) It is asserted by the plaintiff in this case:

1. That the defendant, at the time and place mentioned in the information on file herein, had the intention of then and there getting possession and control of the narcotic drug, heroin, which was in the package (plaintiff's exhibit "D" in this case) in the cargo office of the Pan American Airways in the Nordale Hotel in the Town of Fairbanks, Alaska consigned to Mrs. Juanita Pearson, Fairbanks, Alaska;
2. That the said defendant then and there believed that said package contained heroin, a narcotic drug;
3. That said defendant then and there wrote and signed the name of Mrs. Juanita Pearson thereto, a letter addressed to said cargo office authorizing the employees [99] therein to deliver said package to a Mr. James Brazell, a driver for the Checker Cab Company in Fairbanks, Alaska;
4. That the said defendant then and there directed said James Brazell to go to said cargo office and get said package;
5. That said James Brazell then and there went to said cargo office and presented said letter to the employees therein and attempted to get said package from said employees for said defendant;
6. That said employee in charge of said cargo office did not deliver said package to said James Brazell solely because one Power G. Greer, a Treasury enforcement agent of the United States, then

and there had possession of said package and refused to allow it to be given to said Brazell;

7. That at the time defendant caused said James Brazell to go to said cargo office for said package, it appeared to her that in the usual course of events and if not hindered by extraneous causes, she could get possession and control of said package by causing said James Brazell to get it and bring it to her by presenting said letter to the employee in charge of said cargo office;

8. That defendant then and there believed that she could get possession and control of said heroin by sending said James Brazell for the same at said cargo office [100] and did not know that the means she had chosen for getting such possession of said heroin were blocked by said Power G. Greer;

(b) The jury is instructed that if they believe that each of the assertions of the plaintiff set forth above in this instruction have been proved to be true beyond a reasonable doubt, the jury should find the defendant guilty of the crime of attempting to commit the crime charged in the information herein;

(c) If on the other hand, the jury does not believe that each of said assertions of the plaintiff mentioned above in this instruction in paragraph (a), sub-paragraphs 1 to 8 inclusive have been proved to be true beyond a reasonable doubt, the jury should find the defendant not guilty of the crime of attempting to commit the crime charged in the information herein.

5.

You are instructed that the information is a mere

accusation and is not in itself any evidence of the defendant's guilt.

The defendant has pleaded not guilty to the matters set forth in said information. That plea puts in issue every material allegation of the information, and puts the burden of proof upon the plaintiff to prove every such allegation beyond a reasonable doubt. The defendant is presumed [101] to be innocent and until the plaintiff has proven every material allegation of said information beyond a reasonable doubt, the defendant is entitled to the continued benefit of the presumption of his innocence.

6.

You are instructed that there are two general classes of evidence, direct and circumstantial. Evidence as to the existence of the main fact in issue is direct evidence, while circumstantial evidence relates to the existence of facts which raise a logical inference as to the existence of the main fact in issue.

It is not necessary to prove a case by the testimony of eye witnesses, but the same may be established by facts and circumstances from which it may be reasonably and satisfactorily inferred, provided such facts and circumstances establish guilt beyond a reasonable doubt.

Circumstantial evidence is to be regarded by the jury in all cases where it is offered. Sometimes it is quite as convincing in its power as the direct and positive evidence of eye witnesses, and when it is strong and satisfactory the jury should so consider it, neither enlarging or belittling its force, but the

circumstances when taken together should be of a conclusive nature and tendency, leading on the whole to a satisfactory conclusion and producing in effect a reasonable and moral certainty that the accused committed the crime [102] charged. And it is an invariable rule of law that such facts and circumstances must be shown as are consistent with the guilt of the person charged and as cannot on any reasonable theory be true and the person charged be innocent.

7.

You are instructed that you should consider no evidence sought to be introduced but excluded by the court; nor should you consider any evidence stricken from the record by the court. You should not take into consideration any information which is not derived from the evidence or lack of evidence and pursuant to the court's instructions. Provided, however, that you should bring to bear upon the consideration of the evidence or lack of evidence in this case all of the common knowledge of men and affairs which you, as reasonable human beings, have and exercise in everyday affairs of life. Accordingly, you should draw from the evidence or lack of evidence in this case all deductions which appear to you to flow logically from the evidence or lack of evidence. Whatever verdict is warranted by the evidence under the instructions of the court, you should return as you have sworn to do.

8.

In regard to the term "reasonable doubt," as used

in these instructions and as defined by law, you are instructed as follows: [103]

(a) If, after considering all of the evidence in the case, there is in the minds of the jury a fixed conviction that the defendant is guilty and that conviction arises out of the evidence in the case, the jury would be justified in considering that there is no reasonable doubt in the minds of the jury in the sense in which the term is used in law.

(b) A doubt, to be such a reasonable doubt, must be actual and substantial and not a mere fanciful speculation. It cannot be a reasonable doubt if it ignores a reasonable interpretation of the evidence or lack of evidence within the power of a party to produce or arises merely from sympathy or a vague fear. The rule of law as to a reasonable doubt is a practical rule for the guidance of practical jurors when engaged in the solemn duty of assisting in the administration of justice and is not whimsical or fanciful. A doubt, to be a reasonable one must have a real substantial basis and not be mere fancy or conjecture. It must be such a doubt as would give rise to grave uncertainty and make the juror feel that he did not have an abiding conviction of the defendant's guilt. To prove a proposition beyond a reasonable doubt, the evidence or lack of evidence must be such that it would convince a prudent man of its truth to such a degree of certainty that he would feel like acting upon such conviction in matters of the highest importance to his own personal interests. [104]

9.

You are instructed that, as used with reference to the case now on trial:

The word "wilfully" means intentionally and deliberately, and implies knowledge on the part of the wrongdoer.

The word "unlawfully" means forbidden by law.

The word "feloniously" means the unlawful doing of an act which may be punished by imprisonment in the penitentiary, such as the crime charged in this case. The word "unlawfully" is included in the word "feloniously."

10.

You are instructed that the laws of the Territory of Alaska lay down the following general rules for your guidance as to the value of evidence, to-wit:

1. That you are not bound to find in conformity with the declarations of any number of witnesses which do not produce conviction in your minds against a less number, or against a presumption or other evidence satisfying to your minds.

2. That a witness wilfully false in one part of his testimony may be distrusted in others.

3. That evidence is to be estimated not only by its own intrinsic weight, but also according to the evidence which it is in the power of one side to produce and of the other to [105] contradict; and, therefore,

4. That if the weaker and less satisfactory evidence is offered when it appears that stronger and more satisfactory evidence was within the power of the party, the evidence offered should be viewed with distrust.

5. That oral admissions of a party should be viewed with caution.

11.

You are instructed as follows:

1. That you should not consider any evidence sought to be introduced, but excluded by the court, nor should you consider any evidence that has been stricken from the record by the court;

2. That it is manifestly impossible for the court to cover the law of this case in a few instructions and that, therefore, you should consider all the instructions together and not disconnectedly;

3. That wherever in these instructions the masculine is used, it shall be deemed to include the feminine, unless the context shows it to be inapplicable.

4. That you should endeavor to agree upon a verdict and should calmly reason with your fellows with the view of arriving at a verdict. You should not refuse to agree from pride of opinion, nor should you surrender any conscientious views founded on the evidence or lack of [106] evidence.

5. That wherever in these instructions the singular is used, it shall be deemed to include the plural, unless the context shows it to be inapplicable.

12.

You are instructed that in the trial of a criminal case the person accused is a competent witness in his own behalf, at his own request, but not otherwise, the credit to be given to his testimony being left solely to the jury under the instructions of the court. If the defendant does not choose to appear as

a witness in his own behalf, the laws of Alaska provide that his waiver to so testify shall not create any presumption against him, and you will, therefore, in this case not permit the failure of the defendant to testify to create any presumption in your minds against his innocence.

13.

In determining the credit you will give to a witness and the weight and value you will attach to his testimony you should take into account the conduct and appearance of the witness upon the stand; the interest he has, if any, in the result of the trial; the motive he has in testifying, if any is shown; his relation to or feeling for or against any of the parties to the cause; the probability or improbability of his statements; the opportunity he had to observe and to be [107] informed and the inclination he evinced to speak the truth or otherwise as to matters within his knowledge. It is your duty to give to the testimony of each and every witness appearing before you such credit as you consider the same justly entitled to receive.

You are further instructed that in your consideration of the evidence in this case you should analyze it in the light of the knowledge which your experience in life has given you, and you should draw from the evidence all logical and natural deductions and be governed accordingly.

14.

Pursuant to the foregoing instructions, I have prepared two forms of verdict which are self-explanatory.

You should elect a foreman and by him or her sign the verdict upon which you unanimously agree and return it into the court as your verdict.

Herewith I hand you these instructions for your guidance, together with the above mentioned forms of verdict, the exhibits that have been introduced and the information in this case. Return all of these into court with your verdict.

Dated at Fairbanks, Alaska this 15th day of May, 1951.

/s/ HARRY E. PRATT,
District Judge.

The Court: Attorneys may come forward for exceptions at this time.

(The following proceedings were had out of the presence and hearing of the jury):

Mr. Taylor: I think I am going to except to instruction number 9 I believe.

The Court: Number 9? Or 8?

Mr. Taylor: Nine, I think. Yeah. The court has instructed in 9 the definition of the word "wilfully" and also as to the word unlawfully where neither of the words appear in the information on file charging the crime. The only thing—

The Court: It can't hurt you.

Mr. Taylor: I was going to except to number 3 (a) upon the ground as to an attempt to commit the crime charged in the information, upon the grounds there was no attempt alleged in the information whereas the law relating to the unlawful use and

possession of narcotics contains a clause defining attempts to violate the narcotic law and then also, your Honor, I am going to except to—

The Court: Just a minute, Mr. Taylor.

Mr. Hepp: I would like to make a statement concerning that, your Honor. [109]

The Court: All right.

Mr. Hepp: And that is the law which counsel says defines an attempt. Actually it doesn't define an attempt but merely uses that word in defining fraud and deceit and an attempt to commit fraud and deceit. The section doesn't purport to define the law on attempt and is not consequently—doesn't have any bearing and I believe that matter was ruled on in the course of the trial as to the significance of that other section that is contained in the narcotic law.

Mr. Taylor: Let's see, I had one—4 (2), I except to the use of the word "believed" at the end of the first line thereof under the opinion that the word "knew that said package contained heroin, a narcotic drug." That "belief" wasn't founded upon the facts. I think it should be worded so that they had knowledge that the said package contained—

The Court: I believe "believed" is sufficient, don't you?

Mr. Hepp: She could certainly be guilty of an attempt of trying to possess it, if she believed it was in there, because in the very nature of things in something like that, your Honor, she couldn't know that the—for instance a sender might have inadvertently left it out. I mean, she would have no way

of knowing what was inside of the package and to premise a conviction on that kind of proof is just impossible.

Mr. Taylor: That's all I have.

The Court: All right, it will be denied, overruled.

(The following proceedings were had in the presence and hearing of the jury)

The Court: The jury may retire in the custody of the bailiffs.

(At 11:40 a.m., the jury in charge of its sworn bailiffs retired to enter upon its deliberations.)

[Endorsed]: Filed June 25, 1951.

[Endorsed]: No. 13020. United States Court of Appeals for the Ninth Circuit. Leona Simpson, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the District Court for the District of Alaska, Fourth Judicial Division.

Filed July 20, 1951.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 13020

LEONA SIMPSON,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS

The appellant states that the points upon which she intends to rely on this appeal are as follows:

1. That the Trial Court erred in overruling appellant's objections to questions asked by appellee at pages 13, 14, 15, 21, 23 and 25 of the Transcript of Trial as numbered by the official Court Reporter.
2. That the Trial Court erred in sustaining appellee's objection to question by appellant at page 53 of the said Transcript of Trial.
3. That the Trial Court erred in denying in part appellant's Motion for an Order Directing a Verdict of Acquittal and in refusing to direct a verdict at page 93 of said Transcript of Trial. The Motion made at the conclusion of appellee's case appears at pages 93 and 94 of said Transcript of Trial.
4. That the Trial Court erred in denying appellant's Motion for a Directed Verdict of Acquittal at page 96 of said Transcript of Trial. The Motion made after the defense had rested appears at page 95 of said Transcript.
5. That the Trial Court erred in denying ap-

pellant's exception to the Court's Instruction No. 3A at page 111 of the said Transcript of Trial. Instruction 3A is set out at page 98 of said Transcript and the Exception is made at page 109 of said Transcript.

6. That the Trial Court erred in overruling appellant's exception to the Court's Instruction No. 4(2) at page 111 of said Transcript of Trial. Instruction No. 4(2) is set out at page 99 of said Transcript and the Exception is made at page 109 of said Transcript.

7. That the Trial Court erred in denying appellant's Motion for Acquittal and, in the Alternative, For a New Trial. The Motion for Acquittal appears at page 34 of the original certified record. The Order denying said Motion appears at page 35 of said record.

8. That the Court erred in denying appellant's Motion for New Trial. The Motion For New Trial appears at pages 36-38 inclusive of said original certified record. The Order of Denial appears at page 39 of said original certified record.

9. The evidence was insufficient to justify the verdict.

10. The verdict was contrary to law.

/s/ WILLIAM V. BOGESS,
WARREN A. TAYLOR,
Attorneys for Appellant.

Acknowledgment of Service attached.

[Endorsed]: Filed July 23, 1951. Paul P. O'Brien,
Clerk.

[Title of U. S. Court of Appeals and Cause.]

DESIGNATION OF RECORD

To: The Clerk of the United States Court of Appeals for the Ninth Circuit:

The appellant hereby designates, by reference to the pages of the original certified record, the following portions of said record which are material to the consideration of this appeal:

Information, page 1.

Waiver, Arraignment, Plea and Setting for Trial, page 3.

Verdict, page 12.

Motion for Acquittal and, in the Alternative for a New Trial, page 33.

Order Denying Motion for Acquittal and, in the Alternative, for a New Trial, page 35.

Motion for New Trial with Accompanying Affidavit and Exhibit, pages 36-38.

Order Denying Motion for New Trial, page 39.

Sentence, page 40.

Judgment and Commitment, page 41.

Notice of Appeal, pages 42-43.

Designation of Record, page 48.

Transcript of Proceeding at Trial (pages 1 to 111 as numbered by the official Court Reporter).

All the Exhibits admitted in evidence at the Trial.

This Designation of Record and the Statement of Points filed therewith.

/s/ WILLIAM V. BOGESS,
WARREN A. TAYLOR,
Attorneys for Appellant.

Acknowledgment of Service attached.

[Endorsed]: Filed July 23, 1951. Paul P. O'Brien,
Clerk.

